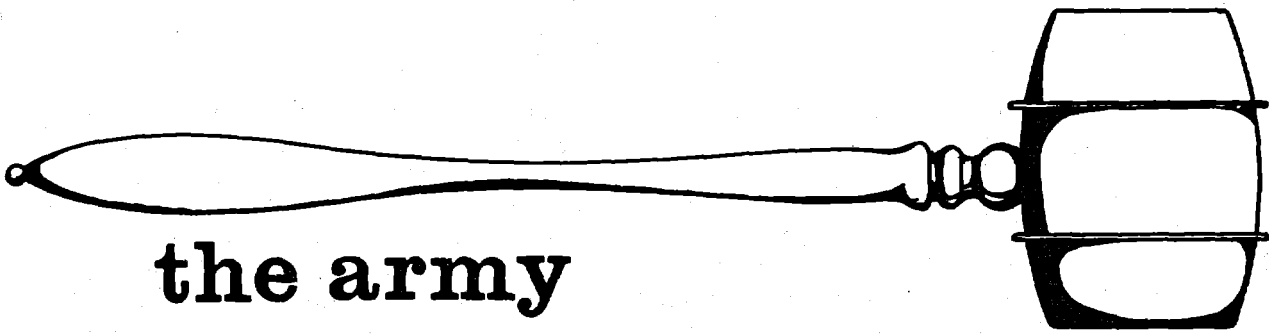


CPT DUMMER



the army

LAWYER

HEADQUARTERS, DEPARTMENT OF THE ARMY

Department of the Army Pamphlet 27-50-63  
March 1978

**Saluting the State Flag—Federal  
Facility Compliance with State  
Environmental Requirements**

*Major Thomas M. Strassburg, JAGC,  
Instructor, Administrative and Civil Law  
Division, TJAGSA*

Saluting the State Flag—Federal Facility Compliance with State Environmental Requirements	1
Administrative and Civil Law Section	6
Legal Assistance Items	7
The Distinction Between Searches and Inspections	11
Judiciary Notes	15
Quarterly Court-Martial Rates Per 1,000 Average Strength	16
Nonjudicial Punishment Quarterly Court-Martial Rates Per 1,000 Average Strength	16
Promotion to General Officer	16
Chief Judge, United States Army Judiciary (MOB DES) Selected	17
CLE News	18
Recent Developments in the Taxation of Alcoholic Beverages Sold by an Army Non Appropriated Fund Instrumentality	34
New Minor Construction Act	35
JAGC Personnel Section	37
Current Materials of Interest	38

Throughout most of our history the installation commander and his or her lawyer have been relatively secure from concerns about state regulation. Because of the supremacy clause and the concept of the federal enclave, it was not likely that a state or local agency would substantially affect the conduct of activities on military installations. Recently, however, Congress has through environmental legislation deprived the military and other federal agencies of much of their immunity from direct regulation by the states.

It all started in 1970 when Congress sought to require the operators of federal facilities to comply with not only federal, but state, local and interstate requirements respecting the control of air pollution.<sup>2</sup> This law was implemented in an executive order which provided that federal facilities should provide leadership in the area of pollution abatement by complying with substantive standards and limitations.<sup>3</sup> The order went on to say, however, that it was not intended to require compliance with state or local administrative procedures

respecting pollution control.<sup>4</sup> The Army adopted a similar position.<sup>5</sup>

Relying upon the language of the Clean Air Amendments of 1970, the Commonwealth of Kentucky sought to require officials at Fort Campbell, Fort Knox, and other federal installations to obtain permits pursuant to regulations of the Kentucky Air Pollution Control Commission.<sup>6</sup> Dutifully complying with the policy of the President and the Army, the officials provided data to Kentucky concerning their heating plants but refused to apply for permits. Kentucky brought suit to enjoin the Army and other federal defendants from refusing to comply with its permit requirements.

Unsuccessful in the lower federal courts, Kentucky sought and obtained review by the Supreme Court and in the case of *Hancock v. Train*<sup>7</sup> received what appeared to be a final decision in favor of the federal defendants. The Court stated that the "specific question is whether obtaining a permit to operate is among those 'requirements respecting control and abatement of air pollution' with which existing facilities must comply under §118 of the Clean Air Act."<sup>8</sup> The opinion noted that while the Constitution does not prohibit state regulation which affects the activities of the federal government, "an authorization of state regulation

is found only when and to the extent there is 'a clear congressional mandate,' 'specific congressional action' that makes this authorization 'clear and unambiguous.'"<sup>9</sup> The Court concluded that the Clean Air Act did not satisfy these requirements but invited Congress to amend the Act if it desired to subject federal facilities to state control.<sup>10</sup> In a companion case the Supreme Court decided that federal facilities need not obtain permits from states with federally approved permit programs under the Federal Water Pollution Control Act<sup>11</sup> but again invited Congress to clarify its intent if it desired to do so.<sup>12</sup> It is Congress' acceptance of these invitations that gives rise to this article.

Less than four months after the Supreme Court's decisions were handed down Congress made sure that it did not make the same "mistake" that it had earlier. In enacting the Resource Conservation and Recovery Act of 1976 Congress rejected the recommendation of the Administrative Conference of the United States that responsibility for substantive and procedural compliance by federal facilities be vested in a single federal agency (the Environmental Protection Agency).<sup>13</sup> Rather, Congress adopted the Senate's provisions pertaining to federal facility compliance which required that federal facilities comply with "all Federal, State, interstate, and local requirements, both

#### The Judge Advocate General

Major General Wilton B. Persons, Jr.

#### The Assistant Judge Advocate General

Major General Lawrence H. Williams

Commandant, Judge Advocate General's School

Colonel Barney L. Brannen, Jr.

#### Editorial Board

Colonel David L. Minton

Lieutenant Colonel Victor G. McBride

Captain Percival D. Park

#### Editor

Captain Charles P. Goforth, Jr.

#### Administrative Assistant

Ms. Helena Daidone

*The Army Lawyer* is published monthly by The Judge Advocate General's School. Articles represent the opinions of the authors and do not necessarily reflect the views of The Judge Advocate General or the Department of the Army.

*The Army Lawyer* welcomes articles on topics of interest to military lawyers. Articles should be typed double spaced and submitted to: Editor, *The Army Lawyer*, The Judge Advocate General's School, Charlottesville, Virginia, 22901. Because of space limitations, it is unlikely that articles longer than twelve typewritten pages can be published. If the article contains footnotes they should be typed on a separate sheet. Articles should follow *A Uniform System of Citation* (12th ed. 1976). Manuscripts will be returned only upon specific request. No compensation can be paid for articles.

Individual paid subscriptions are available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The subscription price is \$9.00 a year, 80¢ a single copy, for domestic and APO addresses; \$11.25 a year, \$1.00 a single copy, for foreign addresses.

Funds for printing this publication were approved by Headquarters, Department of the Army, 26 May 1971. Issues may be cited as *The Army Lawyer*, [date], at [page number].

substantive and procedural (including any requirements for permits or reporting . . . ) . . . .”<sup>14</sup> The legislation also makes the United States and its agents, officers, and employees subject to suits for injunctive relief in state or federal court as well as sanctions necessary to enforce injunctive relief.<sup>15</sup> While the legislative history of these provisions is unenlightening,<sup>16</sup> the language of the statute is quite clear. Absent a presidential exemption,<sup>17</sup> the commander of a military installation is subject to state and local requirements concerning the management of solid and hazardous wastes to the same extent as any private citizen or private industry.<sup>18</sup>

Scarcely a year after the Supreme Court invited the Congress to amend the Clean Air Act,<sup>19</sup> Congress accepted the invitation.<sup>20</sup> The amendment of the federal facility compliance provisions of the Clean Air Act is similar to the amendment of those provisions in the Resource Conservation and Recovery Act of 1976 discussed above. It is, however, more comprehensive and supported by a more detailed legislative history.<sup>21</sup> The amended section 118 of the Clean Air Act<sup>22</sup> required federal facility compliance with administrative authority, process, and sanctions “to the same extent as any non-governmental entity.”<sup>23</sup> While the Resource Conservation and Recovery Act provides only for injunctive relief in state and federal court,<sup>24</sup> the Clean Air Act contains no such limitation. The language of the statute makes it very clear that federal agencies and officials are to be subject to “any process and sanction, whether enforced in Federal, State, or local courts or in any other manner.”<sup>25</sup> The House Report explains further:

The applicable sanctions are to be the same for Federal facilities and personnel as for privately owned pollution sources and for the owners or operators thereof. This means that Federal facilities and agencies may be subject to injunctive relief (and criminal or civil contempt citations to enforce any such injunction), to civil or criminal penalties, and to delayed compliance penalties.<sup>26</sup>

The statute goes on to provide, however, that a federal official is not to be held “personally liable for any civil penalty for which he is not otherwise liable.”<sup>27</sup> The meaning of this provision is not entirely clear, but a fair reading of it suggests that the intent of Congress was to preserve federal officials’ immunity from civil penalties to the extent that case law provides therefor. On the other hand, it appears that Congress did not intend to broaden official immunity in any way. For example, if a commander acts so far beyond the scope of his or her authority that she or he loses the protection of the doctrine of official immunity, this provision will not protect him or her from civil liability. Similarly, if a commander engages in criminal conduct or is held in contempt of court, neither the Clean Air Act nor any other statute gives him or her substantive protection.

The new provisions of the Clean Air Act also contain a clear and broad waiver of the sovereign immunity of the United States.<sup>28</sup> There is no limitation concerning the sanctions to which federal departments and agencies may be subjected, and the authority to enforce air pollution abatement requirements in state and local administrative and judicial tribunals is explicitly provided for in the statute. The remaining question is whether actions brought against federal agencies and officials may be removed to federal court. Fortunately, the legislative history provides a clear answer. The House and Senate conferees rejected a provision in the House version of the bill which would have prohibited removal of suits against federal facilities and officials,<sup>29</sup> so it seems clear that such suits may be removed to federal court if they otherwise qualify for removal.

The provisions of section 118 of the Clean Air Act which authorize presidential exemptions of federal sources of air pollution on a case by case basis were left intact by the 1977 amendments. The restrictions on the use of the presidential exemption, however, are the same as those contained in the Resource Conservation and Recovery Act and similar laws—the President may exempt most pollution sources for up to one year if it is in the paramount interest of the United States and the need for the exemption

is not due to the failure to request necessary appropriations from Congress.<sup>30</sup> A new exemption provision has been added which provides statutory authority for the President to exempt uniquely military property (including, *inter alia*, weaponry, equipment, aircraft, and vehicles) from air pollution abatement requirements.<sup>31</sup> In the past the Administrator of the Environmental Protection Agency has accomplished this, to the extent permissible, by regulation.<sup>32</sup>

Finally, Congress made minor changes in other provisions of the Clean Air Act to make federal facilities fully subject to state authority. The Clean Air Act encourages states to develop plans for enforcing standards of performance for new sources of air pollution<sup>33</sup> and emission standards for hazardous air pollutants,<sup>34</sup> but until the 1977 amendments became law, the states could not obtain authority to enforce such standards against federal facilities.<sup>35</sup> These restrictions on state enforcement have now been eliminated.<sup>36</sup>

Just as Congress accepted the invitation of the Supreme Court to modify the Clean Air Act, so too it accepted the Court's invitation to modify the Federal Water Pollution Control Act to subject federal facilities to state procedural requirements. Section 61 of the Clean Water Act of 1977<sup>37</sup> is very similar to the amendment to the Clean Air Act discussed above.<sup>38</sup> The Clean Water Act contains essentially the same provisions concerning compliance with substantive and procedural requirements (including permit requirements), and state and local administrative authority, process, and sanctions.<sup>39</sup> The language of the statute allows removal of suits against the United States and its officials to federal courts, so there is no need to rely upon the legislative history, as in the Clean Air Act, but the result is the same.<sup>40</sup>

There is one significant difference in the language of the Clean Water Act. While the Clean Air Act contains no provision exempting the United States from civil penalties, the Clean Water Act provides that "the United States shall be liable only for those civil penalties arising

under Federal law or imposed by a State or local court to enforce an order or the process of such court."<sup>41</sup> In other words, state civil penalties unrelated to the contempt power apparently may be enforced against the United States under the Clean Air Act but not under the Clean Water Act.

Under the National Pollutant Discharge Elimination System of the Federal Water Pollution Control Act there are still some states which have not obtained authority from the Environmental Protection Agency to issue permits. In such states, dischargers into the navigable waters must apply for state certification before obtaining a federal permit from the EPA.<sup>42</sup> While operators of federal facilities have always recognized their obligations to obtain permits from the EPA, they have been able to rely upon a statutory exemption from the state certification requirement. That statutory exemption has been eliminated by the Clean Water Act of 1977.<sup>43</sup>

The Safe Drinking Water Act,<sup>44</sup> like the other environmental legislation discussed in this article, provides for federal standards and authority for federal regulation but places primary responsibility on the states for implementation and enforcement. It is not surprising, therefore, that its amendment in late 1977 included provisions similar to those in the Resource Conservation and Recovery Act, the Clean Air Act, and the Clean Water Act requiring federal facility compliance with state procedures.<sup>45</sup> The approach of the Safe Drinking Water Amendments of 1977 is slightly different from that of the other federal facility compliance laws. Its emphasis is upon *agency* compliance as opposed to compliance by *officials* of federal agencies. Officials are clearly immune from civil penalties under the Act to the extent that their actions are within the scope of their official duties.<sup>46</sup> While this is apparently the result under the other statutes, the language of the Safe Drinking Water Amendments is most explicit in this regard. The waiver of the sovereign immunity of the United States is the same as that contained in the Clean Air Act and the Clean Water Act.<sup>47</sup>

What are the implications of all of these clarifications of congressional intent for the military lawyer at the installation level? It seems evident that the administrative lawyer and the environmental law specialist will be required to become more familiar with state and local procedures and conditions. They will want to be alert to matters such as local recycling and beverage container deposit ordinances, state and local permit requirements for new construction, open burning regulations, and all other substantive and procedural requirements of a local nature. The new federal facility compliance provisions serve to re-emphasize the need for close coordination between military lawyers and their counterparts at the regional offices of the Environmental Protection Agency. Experience has demonstrated that "cooperative federalism" can work to bring about an improvement of environmental quality. The point of the new legislation is that commanders of military installations and operators of other federal facilities are, except for narrow statutory exemption provisions, under the same environmental obligations as the owners and operators of private industry.

### Notes

1. See U.S. DEPT OF ARMY, PAMPHLET NO. 27-21, MILITARY ADMINISTRATIVE LAW HANDBOOK para. 6.12 (1973).
2. Clean Air Amendments of 1970, Pub. L. No. 91-604, § 5, 84 Stat. 1689.
3. Exec. Order No. 11,752, 3 C.F.R. 829 (1971-1975 Computation).
4. *Id.*
5. Army Reg. No. 200-2, Cooperation with Federal, State, and Local Pollution Control Authorities (29 June 1973) (superseded by C2, Army Reg. No. 200-1, Environmental Protection and Enhancement (14 Nov. 1975)).
6. See *Kentucky ex rel. Hancock v. Ruckelshaus*, 362 F. Supp. 360 (W.D. Ky. 1973), *aff'd*, 497 F.2d 1172 (6th Cir. 1974), *aff'd sub nom. Hancock v. Train*, 426 U.S. 167 (1976).
7. 426 U.S. 167 (1976).
8. *Id.* at 168-69.
9. *Id.* at 179 (footnotes omitted).
10. *Id.* at 198-99.
11. *EPA v. California ex rel. State Water Resources Control Board*, 426 U.S. 200 (1976).
12. *Id.* at 227-28.
13. See H.R. REP. NO. 94-1491, 94th Cong., 2d Sess. 46-50, reprinted in [1976] U.S. CODE CONG. & AD. NEWS 6284-89.
14. Resource Conservation and Recovery Act of 1976, Pub. L. No. 94-580, § 6001, 90 Stat. 2821 (codified in 42 U.S.C. § 6961).
15. *Id.*
16. See S. REP. NO. 94-988, 94th Cong., 2d Sess. 24 (1976).
17. The President may exempt federal facilities for up to one year if he determines that it is "in the paramount interest of the United States to do so." A major restriction on this authority is that an exemption may not be granted "due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation." 42 U.S.C.A. § 6961 (1977).
18. See S. REP. NO. 94-988, 94th Cong., 2d Sess. 24 (1976).
19. *Hancock v. Train*, 426 U.S. 167, 198 (1976).
20. Clean Air Act Amendments of 1977, Pub. L. No. 95-95, § 116, 91 Stat. 711 (codified in 42 U.S.C. § 7418).
21. See H.R. REP. NO. 95-294, 95th Cong., 1st Sess. 197-201 (1977); S. REP. NO. 95-127, 95th Cong., 1st Sess. 57-58 (1977); H.R. REP. NO. 95-564, 95th Cong., 1st Sess. 137 (1977).
22. 42 U.S.C.A. § 7418 (Supp. 3 1977).
23. *Id.*
24. See text accompanying note 15, *supra*.
25. 42 U.S.C.A. § 7418 (Supp. 3 1977).
26. H.R. REP. NO. 95-294, 95th Cong., 1st Sess. 200 (1977).
27. 42 U.S.C.A. § 7418 (Supp. 3 1977).
28. *Id.*
29. H.R. REP. NO. 95-564, 95th Cong., 1st Sess. 137 (1977).
30. 42 U.S.C.A. § 7418 (Supp. 3 1977).
31. *Id.*
32. See, e.g., 40 C.F.R. § 85.1703 (1976).
33. 42 U.S.C.A. § 7411 (Supp. 3 1977).

34. 42 U.S.C.A. § 7412 (Supp. 3 1977).
35. *See* Clean Air Amendments of 1970, Pub. L. No. 91-604 § 4, 84 Stat. 1683-86.
36. *See* 42 U.S.C.A. §§ 7411, 7412 (Supp. 3 1977).
37. Act of Dec. 28, 1977, Pub. L. No. 95-217, § 61, 91 Stat. 1598.
38. *See* text accompanying notes 22-32, *supra*.
39. Clean Water Act of 1977, Pub. L. No. 95-217, § 61, 91 Stat. 1598.
40. *See id.*
41. *Id.*
42. 33 U.S.C. § 1341 (Supp. V 1975), *as amended by* Clean Water Act of 1977, Pub. L. No. 95-217, § 64, 91 Stat. 1599.
43. Clean Water Act of 1977, Pub. L. No. 95-217, § 61, 91 Stat. 1598.
44. 42 U.S.C. § 300f *et seq.* (Supp. V 1975), *as amended by* Safe Drinking Water Amendments of 1977, Pub. L. No. 95-190, 91 Stat. 1393.
45. Safe Drinking Water Amendments of 1977, Pub. L. No. 95-190, § 8, 91 Stat. 1396-97.
46. *Id.*
47. *See* H.R. REP. NO. 95-338, 95th Cong., 1st Sess. 12-13 (1977).

## Administrative and Civil Law Section

### *Administrative and Civil Law Division, TJAGSA*

#### *The Judge Advocate General's Opinions*

1. (Prohibited Activities and Standards of Conduct, General) **Voluntary Membership in Private Organizations By Military Personnel In Their Individual Capacities Is Not Prohibited.** DAJA-AL 1977/5528, 14 Oct. 1977. The Judge Advocate General was asked by a command staff judge advocate if his commander should discourage or prohibit black members of his command from becoming members of a private organization so long as its membership policies limited membership to blacks only. The Judge Advocate General stated that voluntary membership in an organization by service personnel in their individual capacities was not prohibited by current Army regulations. However, it was noted that participation in the activities of a private organization was limited by the constraints imposed by AR 600-20 and AR 600-50. Specifically, servicemembers must avoid activities on behalf of the private organization which would be incompatible with their official government positions.

2. (Information and Records, Release and Access) **Certain Personnel And Pay Data Releaseable To Attorney Representing Former Wife Of Servicemember.** DAJA-AL 1977/5624, 19 Oct. 1977. An inquiry was made whether the name of the legal guardian of a servicemember,

his unit of assignment, his entitlement to pay and allowances and his proposed referral to a physical evaluation board may be released to an attorney representing the servicemember's former wife in child support and property settlement matters. The Judge Advocate General noted that the Privacy Act permits release of personal information from systems of records where its release would be required by the Freedom of Information Act. There is no need to apply a balancing test to determine the releaseability of the name of the legal guardian of the servicemember or the unit of assignment as release of this type of information would normally not constitute a clearly unwarranted invasion of the individual's personal privacy. In applying the balancing test to the remaining items of personal information, it was decided that the individual's right to privacy must give way to the societal interests in having individuals support their dependents. Accordingly, because judicial proceedings were being held in abeyance pending final resolution of the servicemember's status in the military, the public interest was found to outweigh the privacy considerations involved.

3. (Enlistment and Induction, Enlistment) **Overage Reenlistment Procured Without Recruiter Connivance Voidable At Government's Option, But No Authority To Void**

**Earlier Enlistment.** DAJA-AL 1977/5717, 4 Nov. 1977. An EW fraudulently enlisted in the Army on 16 June 1972 by listing her DOB as 20 May 1938. Her correct date was 20 May 1936. She received an honorable discharge on 27 January 1975 and reenlisted on 28 January 1975, again listing the false birthdate. Thereafter, a CID investigation revealed the correct DOB and concluded that her original enlistment involved recruiter connivance. There was no evidence the EW's second enlistment involved recruiter connivance.

The Judge Advocate General expressed the opinion that the EW's securing her second en-

listment by failing to disclose her correct DOB constituted a fraudulent entry UP Chapter 14, AR 635-200. Thus, the GCMCA could take one of the actions authorized in para. 14-4a(2), AR 635-200. However, there was no authority for the Army to void the original enlistment. The enlistment of an individual in contravention of statutes or regulations generally may be voided by the government, but only while the enlistment is in effect. However, the retirement or issuance of a discharge from the enlistment constitutes a validation of the enlistment and precludes its voidance. Such was the case here, when the Army issued the honorable discharge certificate on 27 January 1975.

## Legal Assistance Items

*Major F. John Wagner, Jr., and Major Steven F. Lancaster,  
Administrative and Civil Law Division, TJAGSA*

*The "Legal Assistance Items" section was not listed in the Table of Contents of the December 1977 issue of The Army Lawyer. You will find the "Legal Assistance Items" beginning on page 34 of the December issue. Please annotate your Table of Contents accordingly. F.J.W.*

### 1. ITEMS OF INTEREST.

**Administration—Preventive Law Program.** The Federal Trade Commission has ruled unanimously that the "package" selling technique developed by Emdeko International, Inc., 1260 E. Vine St., Salt Lake City, Utah, for use by retail distributors of its household products is illegal.

The Commission said, "From the initial lead system contact throughout the supervisor/representative *cum* salesman's representation, and until the close, the consumer is carefully led to believe that he is not the target of a sales pitch. . . . References to sales presentations are avoided or evaded until the offer is sprung. . . . And until then, the impression is carefully created that the products or some of them would either be given away (e.g., the initial gift and the bonus or sweepstakes contest) or that

they would be supplied as part of a research, promotional, or advertising program (e.g., the telephone survey, the worksheets, the testimonial letter program).

"We hold that this method of selling by which a consumer is led to believe that he is not the target of a sales presentation when in fact he is, is an unfair and deceptive practice and is prohibited by Section 5 of the Federal Trade Commission Act."

Major provisions of the FTC's order require that Emdeko (1) stop promoting the use of, using, or assisting others in the use of "package selling," (2) affirmatively disclose to consumers upon each contact that the purpose of the contact is to make a sales presentation, and (3) allow a cooling-off period in connection with similar package sales programs.

In taking this action the Commission sustained with modifications an initial decision filed by Administrative Law Judge Lewis F. Parker on November 30, 1976. [Ref: Ch. 2, DA PAM 27-12.]

**Administration—Preventive Law Program.** The Federal Trade Commission announced that it has filed a complaint against Charles R.

Baldwin, Danny W. O'Keefe, Las Animas Ranch, Inc., Mount Blanca Estates, Inc., Mount Blanca Valley Ranches, Inc., Chubasco, Inc., Pine Cone Properties, Inc., O'Keefe-Baldwin & Associates, Ltd., and Trinchera Creek Estates, Ltd.

Section 19 of the Federal Trade Commission Act authorizes the Commission to seek consumer redress from persons or businesses that have engaged in acts or practices which the Commission has found to have been unfair or deceptive. The Commission made such findings and issued a cease and desist order against the defendants on April 22, 1977.

The complaint alleges that the defendants, through a mail and telephone operation, sold 40,000 acres of undeveloped Colorado land to over 3,000 consumers throughout the United States.

In the course of their sales operation, defendants allegedly made a variety of false, misleading or unfair statements, among them:

- that the land for sale was a good investment;
- that utilities were available at low cost;
- that water could be easily obtained at low cost and used for any purpose;
- that the land was usable for homesites;
- that the land was near resort and recreation areas;
- that the land was currently undergoing residential and recreational development; and
- that some buyers were assuming an equity interest in the land resulting from payments previously made by defaulting purchasers.

Defendants also allegedly failed to disclose certain information which would have been important to purchasers, including information:

- that the purchase of the land was a risky investment;
- that the buyer probably would not be able to resell the land at or above the purchase price;
- that for many lots, utilities were not available except at extremely high cost; and

- that local zoning ordinances effectively prohibited building on some lots.

To compensate consumers who bought land on the basis of the alleged misrepresentations and omissions, the Commission is seeking monetary damages from the defendants and reduction of the amounts consumers still owe on their contracts to purchase the land.

The suit is being handled by the Commission's Denver Regional Office. Any person who purchased land from the defendants and can offer information regarding that purchase is requested to contact:

Federal Trade Commission  
Denver Regional Office  
Suite 2900, 1405 Curtis Street  
Denver, CO 80202  
(303) 837-2271

For further information contact:

Karen S. Blumenberg  
Public Information Officer  
Denver Regional Office  
(303) 837-2271

[Ref: Ch. 2, DA PAM 27-12.]

**Administration—Preventive Law.** The Federal Trade Commission issued a final order to Transworld Accounts, Inc., a Santa Rosa, California Debt Collection Agency, to cease misrepresenting the likelihood or imminency of legal action; and to cease using, or placing in the hands of others, materials which simulate telegraphic communications or which may otherwise mislead debtor recipients as to the nature, import or urgency of such communications. The order was issued on 25 October 1977.  
[Ref: Ch. 2, DA PAM 27-12.]

**Commercial Affairs—Commercial Practices and Controls—Federal Statutory And Regulatory Consumer Protections—Equal Credit Opportunity Act.** An FTC publication, EQUAL CREDIT OPPORTUNITY ACT, should be of interest to any consumer who applies for credit. The brochure summarizes rights given to consumers by the E.C.O Act, including amendments to the law that became effective in March 1977.

The E.C.O. Act, which was enacted by Congress to give consumers important rights when applying for and using credit, went into effect in two stages. First, discrimination in giving credit because of sex or marital status was prohibited in October 1975, and then discrimination because of race, national origin, religion, age (with certain exceptions) and receipt of public assistance payments was prohibited in March 1977. A major provision of the new law gives married women the right to establish their own credit records based on jointly held accounts.

Other important provisions summarized in the publication state that in evaluating an applicant's creditworthiness a creditor must not:

- consider sex, marital status, race, national origin, religion, or age (with limited exceptions).
- refuse to consider reliable public assistance income (such as Social Security or Aid to Families with Dependent Children).
- discount or refuse to consider income derived from part-time employment or from a pension, annuity, or retirement benefit program.
- discount income because of sex or marital status, or assume that a woman of child-bearing age will stop work to raise children.
- refuse to consider consistently received alimony, child support, or separate maintenance payments in the same manner as other income, if the applicant wants this income considered.

The brochure also summarizes a consumer's right to be told the reasons an application for credit was denied.

A creditor must notify an applicant of its decision within thirty days of receiving a completed application. If credit is denied, the creditor must either tell the applicant the specific reasons for denial, or tell the applicant that he or she has a right to learn the specific reasons on request.

The act does not guarantee that an applicant will get credit. Creditors may still determine creditworthiness by considering economic factors such as income, expenses, debts, and previous billpaying habits.

For a copy of the brochure, write EQUAL CREDIT OPPORTUNITY ACT, Public Reference Branch, Federal Trade Commission, Washington, D.C. 20580. [Ref: Ch. 10, DA PAM 27-12.]

**Commercial Affairs—Practices And Controls—Federal Statutory And Regulatory Consumer Protections—Truth In Lending Act.** The Board of Governors of the Federal Reserve System announced on 26 January 1978 that it is modifying provisions of its Truth in Lending Regulation Z relating to billing for cash advance check transactions. The revised rule will become effective March 28, 1978.

The modification will permit creditors to use—in addition to methods already in use for identifying transactions involving cash advance checks—the date on which a creditor charges a cash advance check to the customer's account (the debiting date) in billing the customer.

However, the revised rule provides also:

1. If the date of debiting is used to identify a cash advance check charge, and the customer makes any inquiry about that item, the inquiry must be treated as a notification of a billing error, triggering the provisions of the Fair Credit Billing Act for settling billing errors.

2. No finance charge on the transaction will be allowed during the time a credit card issuer takes to provide required supporting documentary evidence to a customer who questions a billing using the debiting date.

Creditors may continue to use the date a cash advance check is used by the customer (the transaction date), or the date written on the check by the customer, as presently allowed.

The Board proposed to modify the rules for identifying transactions involving cash advance checks on September 29, 1977. The proposal, now adopted, was designed to facilitate compliance with the Fair Credit Billing provisions

of Truth in Lending and at the same time to maintain requirements adequate to allow customers to identify transactions billed to them. While considering the change, the Board postponed the date for full implementation of the section of Regulation Z relating to cash advance check transactions from October 28, 1977 to March 28, 1978. [Ref: Ch. 10, DA PAM 27-12.]

**Commercial Affairs—Commercial Practices And Controls—Federal Statutory And Regulatory Consumer Protections—Unordered Merchandise.** On 11 September 1970 the Federal Trade Commission gave notice that in connection with the shipment of unordered merchandise it considered § 3009 of the Postal Reorganization Act (39 U.S.C. § 3009) as the proper interpretation of § 5 of the Federal Trade Commission Act. On 11 January 1978 the Commission issued a statement intended to clarify the 1970 notice and to avoid misunderstanding in the legal and business community concerning the Commission's enforcement policy.

While the Commission holds to the view that § 3009 states the proper standard under § 5 of the Federal Trade Commission Act as to the mailing of unordered merchandise, it has never intended to restrict the standard to unordered merchandise sent by U.S. mail. The Commission might, for example, prosecute as an unlawful trade practice, under § 5 of the Federal Trade Commission Act, a non-mail shipment of merchandise which does not meet the standards of 39 U.S.C. § 3009. [Ref: Ch. 10, DA PAM 27-12.]

**Family Law—Domestic Relations—Alimony, Child Support, Custody And Property Settlements—Division Of Property Of The Spouses.** The Arizona Court of Appeals recently reversed the decision of a lower court which refused to consider military retirement benefits which had not yet vested as property. The court looked to *Van Loan v. Van Loan*, No. 13129 (filed July 22, 1977), which held that the community acquires a property right in non-vested retirement benefits and that, to the extent that such property right is earned

through community effort, it is divisible by the court upon dissolution of the marriage. The case involved an Air Force officer and his spouse, Eldon and Beverly Woodward. The Woodwards were married in April of 1957, in Kansas. Subsequently, in July of the same year, Eldon was commissioned in the United States Air Force. The Woodwards retained their Kansas domicile until 1972, when they changed their domicile to California. Eldon has retained his California domicile, but in August of 1973 Beverly changed her domicile to Arizona. At the time of the dissolution Eldon had been in the Air Force for almost 18 years and had accrued percentage points towards his retirement which related to his time in service. He is eligible to retire and to receive a pension when he has completed 20 years. The trial court failed to treat the military retirement benefits as community property and divide them in the dissolution proceedings. Beverly alleges that such failure was error. She argues that she is entitled to one-half of the property interest represented by the retirement credits accumulated during the marriage. (The *Van Loan* decision was decided by the Arizona Supreme Court after the trial court entered its decree in this case.) While the court did not compute the interests of the parties in this case, it did discuss some of the issues. The court commented on the retirement credits and stated that when the retirement benefits are paid in the future they will have partially resulted from credits accumulated by Eldon Woodward during the 214 months when his military career and the marriage coincided; thus, the share of the benefits belonging to Beverly would be calculated by reference to a formula in which one of the factors is either 214 months or the number of credits represented by 214 months. In other words, said the court, the present division of the property right is made by reference to the credits accumulated during the marriage. The credits themselves must be characterized as either separate or community property in order to determine what share of the monthly retirement benefits will be considered as separate property or community property.

"... [P]roperty acquired by either spouse outside the state shall be deemed to be community property if said property would have been community property if acquired in this state." Ariz. Rev. Stat. § 25-318. In the instant case some of the credits were accumulated while the parties were domiciled in Kansas, which is a noncommunity property state, and other credits were accumulated while the parties were domiciled in California, a community property state. Applying the usual conflict of law rule, the court would look to the domicile of the parties at the time the property was acquired in order to characterize it as either separate or community property. However, in view of the fact that the Arizona Statute goes contrary to the usual conflict of law rule, and would render all of the credits accumulated during the 214 month period divisible as community property, the court must look to the retroactivity of Arizona Revised Statute § 25-318, which was enacted in 1973. *Woodward v. Woodward*, \_\_\_ Ariz. App. \_\_\_, \_\_\_ P.2d \_\_\_ (Ct. App. 1977), [1977] 4 FAM. L. REP. (BNA) 2073. [Ref: Ch. 20, DA PAM 27-12.]

**Family Law—Support of Dependents—Paternity Matters.** The Alaska Supreme Court recently ruled that an indigent defendant in a suit to establish paternity has a due process right, under the Alaska Constitution, to appoint a counsel. In reaching this holding the court cited *Otton v. Zaborac*, 525 P.2d 537 (Alas. 1974), in which it held that, because of the possibility of a loss of liberty, due process required the appointment of counsel in a civil contempt proceeding for non-support. The court posited that a loss of liberty could result, at least indirectly, from an adverse finding in a paternity suit; a finding of paternity combined

with a failure to support the child could result in criminal liability, a fine and imprisonment. The court also considered the fact that the suit dealt with the parent-child relationship, the suit was brought by the state against the individual, and inheritance rights could be affected. *Reynolds v. Kimmons*, \_\_\_ P.2d \_\_\_ (Alas. 1977); 11 CLEARINGHOUSE REV. 732 (1977). [Ref: Ch. 26, DA PAM 27-12.]

## 2. PUBLICATIONS AND ARTICLES OF INTEREST.

**Family Law—Illegitimate Children.** Note, *Prohibiting Nonaccess Testimony by Spouses: Does Lord Mansfield's Rule Protect Illegitimates?* 75 MICH. L. REV. 1457 (1977). [Ref: Ch. 23, DA PAM 27-12.]

**Administration.** W. CASEY, *LAWYER'S DESK BOOK* (5th ed. 1977). [Ref: Ch. 1, DA PAM 27-12.]

**Administration—Consumer Protection.** Recently the Department of Defense published a three part series in its Defense Information Guidance Series entitled "Credit and the Service Family." The DIGS citation is 8 E-2, 8 E-3, 8 E-4, all dated November 1977. The articles should be a useful tool in local preventive law programs.

## 3. RECENTLY ENACTED LEGISLATION.

**Family Law—Change Of Name.** Massachusetts law now provides that each party to a marriage may retain a birth-given surname, adopt any surname, or adopt any hyphenated combination. Mass. Gen. Laws Ann. ch. 869 (West). [Ref: Ch. 24, DA PAM 27-12.]

## The Distinction Between Searches and Inspections

*This article is a copy of the write-up prepared by JALS-ED pertaining to an application for relief under Article 69, U.C.M.J., submitted by a Private E-1. Except for materials tending to identify the individual involved, it is reprinted in full. This opinion rep-*

*resents not only an extensive analysis of the distinction between searches and inspections as it has developed in the case law, but also an excellent example of the scrutiny to which an application under Article 69, U.C.M.J., is subjected.*

*Case citations have been altered to the style uniformly used in The Army Lawyer, but the original wording is otherwise unchanged.*

JALS-ED (SPCM 1977/4081) 17 January 1978

**APPLICATION FOR RELIEF UP ARTICLE  
69, U.C.M.J.**

APPLICANT: PV1 X TRIED BY: SPCM  
AT: Fort . . . . ON: [Omitted.]

OFFENSE CHG: Article 92, violation of AR  
600-50 by wrongful possession  
of one gram of phencyclidine (PCP), on [omitted].

**PLEAS  
NG**

**FINDINGS  
G**

SENTENCE: CHL for 2 months  
Forfeit \$75 per month for 4  
months

No previous convictions considered.

**POST TRIAL ACTION:**

CONVENING AUTHORITY & DATE: [Omitted]  
 . . . .; approved and ordered executed.

SUPERVISORY AUTHORITY SJA & DATE:  
 [Omitted] . . . .; correct in law and fact.

**SUMMARY OF APPLICANT'S CONTENTIONS;  
CONCLUSIONS**

A. The court admitted evidence obtained by an illegal search of appellant's wall locker.

A. This issue was litigated at length during trial. The accused's battery commander (BC), who ordered the inspection/search of the unit, testified that it was arranged and conducted in accordance with battalion policy (Pros. Exh. 5), that it was one of a series of monthly inspections which he had directed since assuming command some five months previously, that the date had been determined some thirty to sixty days prior to the inspection, that he directed his subordinates "to inspect everyone the same", and that he did not have an eye towards prosecution when he conducted the inspection. R. 7-8.

The purpose of the inspection/search was to look at the overall fitness of the battery to execute its military mission. Pros. Exh. 5. Among other things, inspectors were to find out if barracks and wall lockers were clean and neat, and if soldiers had excess government items (such as bed clothes and hand tools), flammables, unsafe or unregistered vehicles, neglected dirty laundry, and food improperly in the battery area. Although he recognized that contraband such as knives and drugs might be found, the BC did not expect to find drugs because in four previous inspections of the same type none had turned up. R. 6-8.

The inspection was announced at the battery's noon formation on [omitted]. About 1300-1330 hours, while the troops were held in formation, officers and NCO section chiefs took the men a few at a time to their living areas and POV's. The accused was the last of nine soldiers inspected by Staff Sergeant Y. He had him remove "loose items" from his wall locker and put them on the bed, then he examined the locker for cleanliness and conformance with standards of layout (pockets empty, sleeves rolled down and buttoned, etc.). Seeing a cigarette package sticking out of a shirt pocket, SSG Y noticed that the top was torn completely off and no cigarettes were inside. Presuming it to be trash, he pulled it out and balled it up. However, it would not ball up completely, so he opened it to see what was inside. He found foil squares folded around quantities of white powder, and notified the BC. This powder turned out to be a controlled substance (Pros. Exh. 2) and became the subject of the defense motion. SSG Y testified that he used the same procedure with everyone whom he inspected, and that the procedure included a standard preliminary offer to each to accept any contraband under amnesty conditions. R. 10-11.

The law concerning a soldier's right under the fourth amendment to be free from unreasonable searches and seizures has undergone a good deal of change and comment in recent months, especially in cases involving contraband drugs, with some observers ready to conclude that a commander can protect his unit from any threat to readiness except that posed

by drugs. Cf. *United States v. Thomas*, 24 C.M.A. 228, 51 C.M.R. 607 (1976), with *United States v. Roberts*, 25 C.M.A. 39, 54 C.M.R. 39 (1976); in the two cases, four judges of the U.S. Court of Military Appeals wrote six opinions discussing some of the fine points of probable cause, expectation of privacy, distinctions between an inspection and a search, and similar issues.

Although there is still somewhat a state of flux in the applicable law, certain principles remain as beacons of guidance through the judicial fog. The fourth amendment does not forbid military inspections and other legitimate command activities. It prohibits only "unreasonable" intrusion into the privacy of the serviceman's living area and seizure of his possessions. *United States v. Ramirz*, 50 C.M.R. 68 (N.C.M.R. 1974), *aff'd*, 50 C.M.R. 919 (1975) citing *United States v. Kazmierczak*, 16 C.M.A. 594, 37 C.M.R. 214 (1967); *accord*, *Roberts*, *supra* (lead opinion, Perry J).

In determining whether a particular search or inspection is reasonable, the need to conduct it must be weighed against the intrusion into the rights protected. *Camara v. Municipal Court*, 387 U.S. 523 (1967); *United States v. Hayes*, 3 M.J. 672 (A.C.M.R. 1977), *pet. granted*, 3 M.J. 464; *United States v. Jones*, 4 M.J. 589 (C.G.C.M.R. 1977). In *Thomas*, *supra*, Chief Judge Fletcher expressly acknowledged, in an opinion concurring in the result, that an inspection to permit the military society to perform and accomplish its mission "to fight or be ready to fight wars should the occasion arise" is reasonable in purpose. And Judge Cook, dissenting in *Roberts*, *supra*, defended the "shakedown inspection" as a valid tool for the prevention, as well as the abatement, of conditions dangerous to the community. Thus, to the extent that we can discern military law as conceived by a majority of its supreme arbiters, we may shift the focus of reasonableness in the present case to the execution of the search/inspection, secure in the conclusion that it was not unlawful in design.

Some recent opinions ascribe no meaning to

the term used to describe an inspection/search. See, e.g., *Hayes*, *supra*. This rationale requires that any proceeding denominated a search or an inspection be tested for reasonableness, and posits the existence of a category of reasonable warrantless searches in which the crucial needs of a government regulatory scheme outweigh a soldier's justifiable expectations of privacy.

A different panel of the same Court (Army Court of Military Review) has taken the view that inspections are a military necessity; and, if certain criteria are met, the inspection need not be judicially scrutinized as a search. *United States v. Hay*, 3 M.J. 654 (A.C.M.R. 1977). By this reasoning, a military inspection is an examination or review of the person, property, and equipment of a soldier, his barracks, his working area, and material for which he is responsible. It may relate to readiness, security, living conditions, personal appearance, or a combination of these and other categories. Among its attributes are, generally, that it is regularly performed, often announced in advance, usually conducted during normal duty hours, treats personnel in the unit evenhandedly, and has no underlying law enforcement purpose. *Hay*, *supra*. At the same time, "[t]here is no requirement of law or logic which compels a commander to close his mind to the possible results of an inspection" and prepare for them. *United States v. Tate*, 50 C.M.R. 504 (A.C.M.R. 1975). The touchstone of lawfulness for an inspection is military necessity.

We believe that under either approach, it is correct to conclude that the procedure in the present case was proper and the results admissible in evidence. In *Hayes*, *supra*, a unit commander instituted an inspection and logging of all hand-carried items brought into the barracks in order to control bomb threats and to reduce use of drugs and alcohol. Pursuant to this procedure, a charge of quarters looked into a banana box carried by Hayes, and found stolen property. In holding the evidence admissible, the Army Court of Military Review ruled that the interest of the government in keeping narcotics, alcohol, and explosives out of the barracks outweighed the soldier's expectation of privacy in his packages. The court brought

out that the inspection did not involve a search of the person, it took place in a common use area, the accused knew or had cause to know that he was subject to the procedure, and there was no evidence of arbitrary or capricious selection of items to be inspected. The only difference in the present case was that the inspection took place in the accused's living area. But since the purpose of the inspection was proper, it can not be maintained that the inspectors had to be restricted to common use areas: to accomplish their purpose, it was obviously necessary to examine living areas and lockers.

The *Hay* approach interprets the distinction set forth in *United States v. Lange*, 15 C.M.A. 486, 35 C.M.R. 458 (1965), which held that a "search" is made with a view toward discovering evidence to be used in the prosecution of a criminal action, while an "inspection" is an official examination to determine readiness of the person, organization, or equipment, with criminal proceedings as a possible by-product. This distinction of intent was reduced to concern over whether officials were "looking for" something or "looking at" something. *United States v. Goldfinch*, 41 C.M.R. 500 (A.C.M.R. 1969).

In *United States v. Smith*, 48 C.M.R. 155 (A.C.M.R. 1973), *pet. denied*, 48 C.M.R. 1000 (1974), the Army Court of Military Review found that the inspector was looking "at" his unit. In that case, the accused's battery commander announced at a morning formation (0715 hours) that he was about to conduct a health and welfare inspection. Such an inspection was required by higher headquarters; and he had conducted four of them in previous months, with special attention to excess equipment, condition of equipment, condition of rooms, and possession of contraband subject to confiscation. When the commander reached Smith's room, he found, in his locker, an uncovered pottery jar containing about 33 small packets filled with a white powder, which proved to be contraband drugs. The court sustained the lawfulness of the inspection, pointing out that it was one of a regular series, the commander had announced its purpose, the occupants of the rooms involved were present and required to open all lockers, and the command-

er's selection of a date and time was not based on any suspicion of criminal activity.

A similar result was reached on the basis of a slightly different fact situation in *Ramirez, supra*. In that case, two incidents with firearms at a Marine Corps air station led to an order to conduct a general inspection of all barracks on the station. Heroin was found in the accused's locker. The Navy Court of Military Review upheld the subsequent conviction for wrongful possession, finding that the primary purpose of the inspection was to protect base personnel and prevent future incidents, rather than to punish past or potential violators.

In *Tates, supra*, a company commander conducted a required "health and welfare" inspection prior to a payday. Using standard instructions which he had developed from previous inspections, he directed his NCO's to look at the condition of the barracks and personal and unit equipment. They were to recoup and report on equipment surpluses, unauthorized items (mess hall equipment), safety hazards (flammables), and health hazards (drugs, knives, bunk-adaptors). The instructions included details as to possible hiding places for contraband and procedures to follow if it were discovered. No persons or places were singled out for emphasis or exclusion. The Army Court of Military Review found that the commander had conducted a clearly routine, necessary military inspection, and held that contraband rugs and paraphernalia discovered in *Tates's* possession were admissible in evidence. In so doing, it offered a comment on the lack of clarity in current standards for the protection of privacy, and its relationship to command failures to focus on unit imperatives as opposed to acts of individual misconduct.

*Smith, Ramirez, and Tate*, all *supra*, rely heavily on *United States v. Grace*, 19 C.M.A. 409, 42 C.M.R. 11 (1970). In *Grace*, the U.S. Court of Military Appeals held, in part, that an inspection was valid at its outset, even though it involved a quest for contraband weapons, because there was no specific suspicion of criminal misconduct. They further held that when suspicion of misconduct focuses on someone during

the course of an inspection, the proceeding is not transformed into an illegal one unless an impermissible expansion of scope occurs.

On the other hand, *Grace* was also cited to show a proper inspection in *United States v. Wilcox*, 3 M.J. 863 (A.C.M.R. 1977), in which the *Hay* panel of the Army Court of Military Review condemned an "inspection" as an unlawful search. In *Wilcox*, a battalion commander had reports of missing hand tools in two of his companies; and he believed that marijuana use was increasing. The court held that his actions in searching all living quarters in the battalion were unreasonable.

We believe that the present case is controlled by *Smith* and *Tates*, both *supra*. Neither case has been overruled, directly or by implication; and these (as well as cases cited therein) have been cited as authority by military appellate courts since the publication of the recent obfuscatory opinions of the U.S. Court of Military Appeals.

The military judge in the present case made special findings, on request, which included that the inspection was "not dictated by any particular circumstances nor was it a subterfuge for a generalized search of any individual or area." She further found that the BC's intent "was to look at the overall fitness of his unit and . . . not . . . with an eye towards prosecution". App. Exh. V, emphasis supplied. A reference to *Goldfinch*, *supra* in special findings (App. Exh. VI) shows that she was aware of

the "look at/look for" distinction. The finding of intent was based in part on lack of police involvement, no prior determination to prosecute, and offer of amnesty.

Despite the defense contention at trial (and in the application) that certain people were inspected more closely than others, the military judge found that the inspection was carried out properly and the contraband was properly seized. The findings are supported by the testimony of the BC and SSG Y.

The contention has no merit.

#### PERSONAL DATA:

[Omitted.]

In view of the foregoing, it is recommended that relief under Article 69, U.C.M.J., be denied.

[signed.]  
GILBERT C. ADAMS  
Captain, JAGC  
Examiner

[signed.]  
ABRAHAM NEMROW  
Chief, Examination  
and New Trials  
Division

#### APPROVED:

[SIGNED.]  
WILTON B. PERSONS, JR.  
Major General, USA  
The Judge Advocate General

DATED: 20 JAN 78

### Judiciary Notes

#### U.S. Army Judiciary

#### ADMINISTRATIVE NOTES

##### a. Supervisory Review - Article 65(c).

In accordance with paragraph 2-24b(4), AR 27-10, the results of review under Article 65(c), U.C.M.J., should be noted upon the record of trial and copies of the summary or special court-martial order promulgated by the convening authority. The rubber stamp impressions should, generally, be in the format shown on

page 39, *The Army Lawyer*, June 1975. When charges are dismissed in a special court-martial case, after return by the U.S. Army Judiciary, because a rehearing is deemed impracticable, the "acquittal stamp" should be changed to read, for example, as follows: (This record, which resulted in dismissal of charges, has been reviewed for jurisdiction pursuant to Article 65(c). The court had jurisdiction over the person and offense(s).) (This record, which resulted in dismissal of charges, has been

examined pursuant to Article 65(c). The court lacked jurisdiction over the (person) (and) (offense(s).)

#### b. SJA Review - Policy on Forfeitures.

Paragraph 6-22b, AR 190-47, provides that "any sentence imposed on an enlisted person that exceeds forfeitures of two-thirds of pay per month for six months should be remitted by the convening authority unless the sentence includes, and the convening authority approves, a bad conduct discharge or dishonorable discharge or confinement unsuspended for the period of such forfeitures." Recently, in the

examination of general court-martial cases under Article 69, The Judge Advocate General of the Army was required to take corrective action in one instance where, although the approved confinement was for nine months, the period of partial forfeitures was for twenty four months; in another instance, the portion of the forfeitures that exceeded forfeitures for six months was suspended rather than remitted. Such corrective action may not be necessary if the post-trial review reflects that the convening authority was advised of the policy set forth in AR 190-47. In this regard, see *United States v. Bumgarner*, 43 C.M.R. 559 (A.C.M.R. 1970).

#### QUARTERLY COURT-MARTIAL RATES PER 1000 AVERAGE STRENGTH OCTOBER - DECEMBER 1977

	General CM	Special CM BCD	NON-BCD	Summary CM
ARMY-WIDE	.32	.25	1.27	.57
CONUS Army commands	.22	.28	1.24	.67
OVERSEAS	.51	.20	1.31	.41
Army commands				
USAREUR and Seventh				
Army commands	.60	.17	1.23	.27
Eighth U.S. Army	.20	.40	2.33	.46
U.S. Army Japan	—	—	—	—
Units in Hawaii	.11	.22	.77	—
Units in Thailand	—	—	—	—
Units in Alaska	.52	.42	.94	.31
Units in Panama/ Canal Zone	.58	—	1.31	5.67

NOTE: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

#### NON-JUDICIAL PUNISHMENT QUARTERLY COURT-MARTIAL RATES PER 1000 AVERAGE STRENGTH OCTOBER - DECEMBER 1977

	Quarterly Rates
ARMY-WIDE	47.53
CONUS Army commands	51.14
OVERSEAS Army commands	41.18
USAREUR and Seventh Army Commands	41.37
Eighth U.S. Army	65.46
U.S. Army Japan	4.34
Units in Hawaii	4.87
Units in Thailand	—
Units in Alaska	31.92
Units in Panama/Canal Zone	45.78

NOTE: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

### Promotion to General Officer

*The following letter is from The Judge Advocate General*

SUBJECT: Promotion to General Officer

TO ALL RESERVE COMPONENT JUDGE  
ADVOCATE OFFICERS

It is my pleasure to announce the selection of Colonel Jack Bohm of Kansas City, Missouri for promotion to the rank of Brigadier General and to serve as the Chief Judge, U.S. Army

Judiciary (MOB DES). This is one of two general officer positions in the Judge Advocate General's Corps Reserve. The other, Assistant Judge Advocate General for Special Assignments, presently is occupied by BG Edward D. Clapp of St. Paul, Minnesota.

The selection process has been designed to

provide fair and equitable consideration of all officers meeting the basic qualifications and the selection of the most eminently qualified among them.

Pursuant to AR 135-156, nominations are requested by the Office of the Chief, Army Reserve, from the three CONUS Armies, RCPAC, and from the Chief, National Guard Bureau. In addition, I request the review of all files of active USAR JAGC Colonels to identify any qualified officers not nominated by the prior methods.

A Judge Advocate General Officer Advisory Board consisting of the two incumbent JAG Reserve Generals and one Active Army JAG General Officer is appointed. The Board reviews all files selected by the above process and selects the five best qualified officers in order of merit. The Judge Advocate General personally reviews the recommendations and files, making his selection and forwarding it to the Chief, Army Reserve for confirmation and implementing action.

This is the process which was followed in the selection of Colonel Bohm. The files of thirty-nine officers were examined and considered by the Advisory Board in detail during a two day period before it selected and forwarded the names and files of the five officers it recommended as the best qualified.

I believe that this selection process insures the consideration of all qualified officers every time a JAG General Officer vacancy exists. It is important that our Corps have its most qualified officers in these positions.

The selection process would be greatly aided and the eligible officers would be benefited if each of them would periodically review their personnel files to determine that they are complete and accurate. I encourage each of you so to do.

WILTON B. PERSONS, JR.  
Major General, USA  
The Judge Advocate General

### **Chief Judge, United States Army Judiciary (MOB DES) Selected Reserve Affairs Department, TJAGSA**

Brigadier General Jack N. Bohm, JAGC, USAR, was appointed to fill the position of Chief Judge, United States Army Judiciary (MOB DES), formerly held by Brigadier General Demetri M. Spiro, JAGC, USAR. General Bohm served on active duty from February 1943 to January 1946 with 16 months service in the European Theatre of Operations. During a reserve career which began in 1948, General Bohm has served in such assignments as Assistant S-1, 5952d Ordnance School, Staff Judge Advocate, 5520th Logistics Command, Assistant Detachment Commander, 8th JAG Detachment, Commander, 8th JAG Detachment and Staff Judge Advocate, 102d U.S. Army Reserve Command.

General Bohm did undergraduate work at the University of Pennsylvania and University of Kansas City. He graduated from Washington University, St. Louis, Missouri, in 1948 with a Juris Doctor Degree. His military education in-

cludes the Judge Advocate General's Corps Career Course, Command and General Staff Course and the Industrial College of the Armed Forces. He is currently enrolled in the Air War College.

In addition to his private practice, General Bohm has been active in a wide range of professional and community activities. He served as President of District Grand Lodge No. 2, B'nai B'rith, 1964-65, and served as a member of the International Board of Governors of B'nai B'rith from 1968 to 1974. He served as co-chairman of the National Conference of Christians and Jews, Kansas City Region from 1969 to 1972. He is a member of Phi Eta Sigma (national honor fraternity), Phi Alpha Delta Law Fraternity, the Kansas City Bar Association, Missouri Bar Association and American Bar Association. He also served for two years as chairman of the Commercial Law Committee

of the Missouri Bar.

General Bohm, his wife Elizabeth, and their three children live in Kansas City, Missouri,

where he is engaged in the practice of law as a senior partner as well as managing partner in the law firm of Stoup and Bohm.

### CLE News

**1. NCO Advanced Course.** Phase II of the Noncommissioned Officer Advanced Course for senior enlisted personnel in MOS 71D and 71E will no longer be given at The Judge Advocate General's School. This year Phase II will be taught by TJAGSA instructors at Fort Harrison from 12-16 June 1978, immediately following Phase I instruction which begins 7 May 1978.

**2. New Development in Criminal Law Tape.** The Criminal Law Division, TJAGSA, has produced a program of instruction entitled "New Developments in Criminal Law." The instruction is contained on two one-hour, 3/4 inch video-cassettes (part I and II). The videocassettes are used during reserve on-site training and provide reserve judge advocates with an

update on the most recent developments in criminal law. Part I contains an Introduction, updates on Jurisdiction, Confrontation and Compulsory Process, Motions, Search and Seizure, Mental Responsibility, and Pretrial Agreements. Part II contains updates on Extraordinary Writs, Palenius and Post Trial Duties, Self-Incrimination, Corrections, and segments on the New Defense Service and the Military Justice Reporter. The instruction is current as of 6 October 1977.

Judge Advocates interested in obtaining copies of the videocassettes may do so by sending a request accompanied by videocassettes of the appropriate length to The Judge Advocate General's School, U.S. Army, ATTN: Television Operations, Charlottesville, Virginia 22901.

### 3. New tapes available from TELEVISION OPERATIONS, TJAGSA.

#### *PROCUREMENT: 5TH FISCAL LAW COURSE (28 Nov-1 Dec 77)*

		Running Time
JA-112-1	THE ANTI-DEFICIENCY ACT, PART I Speaker: Major Gary L. Hopkins, Procurement Law Division, TJAGSA.	38:00
JA-112-2	THE ANTI-DEFICIENCY ACT, PART II A continuation of JA-112-1.	57:00
JA-112-3	BUDGETING AND FUND DISTRIBUTION Speaker: Captain Theodore F. M. Cathey, Procurement Law Division, TJAGSA.	52:00
JA-112-4	OBLIGATION OF APPROPRIATIONS, PART I Speaker: Major Gary L. Hopkins, Procurement Law Division, TJAGSA.	60:00
JA-112-5	OBLIGATION OF APPROPRIATIONS, PART II A continuation of JA-112-4.	47:00
JA-112-6	OBLIGATION OF APPROPRIATIONS, PART III A continuation of JA-112-4 and JA-112-5.	45:00
JA-112-7	OBLIGATION OF APPROPRIATIONS, PART IV A continuation of JA-112-4, JA-112-5, and JA-112-6.	48:00

JA-112-8	OBLIGATION OF APPROPRIATIONS, PART V (23:00) A continuation of JA-112-4, JA-112-5, JA-112-6, and JA-112-7.  STOCK AND INDUSTRIAL FUNDS (18:00) Speaker: Major Gary L. Hopkins, Procurement Law Division, TJAGSA.	
JA-112-9	MINOR CONSTRUCTION, PART I Speaker: Captain Glenn E. Monroe, Procurement Law Division, TJAGSA.	40:00
JA-112-10	MINOR CONSTRUCTION, PART II A continuation of JA-112-9.	40:00
JA-112-11	FAMILY HOUSING Speaker: Captain Glenn E. Monroe, Procurement Law Division, TJAGSA.	43:00
<b>8TH ADVANCED PROCUREMENT ATTORNEYS' COURSE (9-13 JAN 78)</b>		
JA-113-1	CONSTRUCTION CONTRACTING—AN OVERVIEW, PART I Speaker: Mr. Gilbert Cuneo, Executive Partner, Sellers, Conner and Cuneo, Washington, D.C.	56:00
JA-113-2	CONSTRUCTION CONTRACTING, PART II A continuation of JA-113-1.	54:00
JA-113-3	CHANGES AND DIFFERING SITE CONDITIONS, PART I Speaker: Professor Ralph Nash, Jr., The George Washington National Law Center, Washington, D.C.	53:00
JA-113-4	CHANGES AND DIFFERING SITE CONDITIONS, PART II A continuation of JA-113-3.	60:00
JA-113-5	ANALYZING SPECIFICATIONS, PART I Speaker: Mr. Allan J. Joseph, Partner, Pettit, Evers, and Martin, San Francisco, California.	51:00
JA-113-6	ANALYZING SPECIFICATIONS, PART II A continuation of JA-113-5.	62:00
JA-113-7	GOVERNMENT FURNISHED PROPERTY AND VALUE ENGINEERING Speaker: Major Gary L. Hopkins, Procurement Law Division, TJAGSA.	51:00
JA-113-8	TAXES, USE AND POSSESSION PRIOR TO COMPLETION, AND VARIATION IN ESTIMATED QUANTITIES Speaker: Captain Glenn E. Monroe, Procurement Law Division, TJAGSA.	34:00
JA-113-9	DELAY, SUSPENSION AND ACCELERATION, PART I Speaker: Mr. Dale Oliver, Partner, Jones, Day, Reavis, & Pogue, Washington, D.C.	37:00
JA-113-10	DELAY, SUSPENSION AND ACCELERATION, PART II A continuation of JA-113-9.	55:00

JA-113-11	INSPECTION, ACCEPTANCE AND WARRANTIES, PART I Speaker: Mr. Roy S. Mitchell, Partner, Lewis, Mitchell and Moore, Vienna, Virginia.	49:00
JA-113-12	INSPECTION, ACCEPTANCE AND WARRANTIES, PART II A continuation of JA-113-11.	44:00
JA-113-13	MINOR CONSTRUCTION Speaker: Major Gary L. Hopkins, Procurement Law Division, TJAGSA.	28:00
JA-113-14	SUBCONTRACTS AND LABOR PROBLEMS, PART I Speaker: Mr. Overton Currie, Partner, Smith, Currie and Hancock, Atlanta, GA.	50:00
JA-113-15	SUBCONTRACTS AND LABOR PROBLEMS, PART II A continuation of JA-113-14.	52:00
JA-113-16	HINTS ON EFFECTIVE CLAIM INVESTIGATION AND HAN- DLING, PART I Speaker: Mr. John J. Buford, Division Counsel, Missouri River Divi- sion, Corps of Engineers.	50:00
JA-113-17	HINTS ON EFFECTIVE CLAIM INVESTIGATION AND HAN- DLING, PART II A continuation of JA-113-16.	25:00
JA-113-18	SIMULATED NEGOTIATION SESSION ON CONTRACT CLAIMS, PART I Panel: Corps of Engineers.	59:00
JA-113-19	SIMULATED NEGOTIATION SESSION ON CONTRACT CLAIMS, PART II A continuation of JA-113-18.	59:00
JA-113-20	SIMULATED NEGOTIATION SESSION ON CONTRACT CLAIMS, PART III A continuation of JA-113-18 and JA-113-19.	21:00
JA-113-21	PREPARING AND DEFENDING CONSTRUCTION CONTRACT CLAIMS, PART I Speaker: LTC Robert M. Nutt, Chief, Procurement Law Division, TJAGSA.	60:00
JA-113-22	PREPARING AND DEFENDING CONSTRUCTION CONTRACT CLAIMS, PART II A continuation of JA-113-21.	60:00
JA-113-23	REMEDIES IN CONSTRUCTION, PART I Speaker: Judge Richard Solibakke, Chairman, Armed Services Board of Contract Appeals, Alexandria, VA.	60:00
JA-113-24	REMEDIES IN CONSTRUCTION, PART II A continuation of JA-113-23.	26:00

**ADMINISTRATIVE AND CIVIL LAW:**  
**5TH LEGAL ASSISTANCE COURSE (17-20 OCT 77)**

JA-246-1	<b>FAMILY LAW: RECENT DEVELOPMENTS, PART I</b> Speaker: Major John F. Wagner, Administrative and Civil Law Division, TJAGSA.	50:00
JA-246-2	<b>FAMILY LAW: RECENT DEVELOPMENTS, PART II</b> A continuation of JA-246-1.	60:00
JA-246-3	<b>FAMILY LAW: SUPPORT OF DEPENDENTS AND FORMER SPOUSES</b> Speaker: Major John F. Wagner, Administrative and Civil Law Division, TJAGSA.	35:00
JA-246-4	<b>CONSUMER AFFAIRS, PART I</b> Mr. Robert Hughes, Attorney, Federal Trade Commission, discusses the Federal Trade Commission Act of 1914 and its subsequent amendments which give the Federal Trade Commission the authority to promulgate rules pursuant to legislation which has been adopted. Mr. Hughes also discusses the role of the Regional Offices of the Federal Trade Commission and the implications of the Federal Trade Commission Improvement Act, which allows the Federal Trade Commission to bypass administrative hearings and go directly into federal district court in certain instances.	50:00
JA-246-5	<b>CONSUMER AFFAIRS, PART II</b> Mr. Irvin Abrams, Consumer Protection Specialist, Federal Trade Commission, discusses the Federal Truth-in-Lending Act and Regulation Z.	37:00
JA-246-6	<b>CONSUMER AFFAIRS, PART III</b> Mr. Hughes covers the rule on the Preservation of Consumers' Claims and Defenses.	44:00
JA-246-7	<b>CONSUMER AFFAIRS, PART IV</b> This tape covers various rules and laws which come under the auspices of the Federal Trade Commission such as the Fair Credit Billing Act, the Magnuson-Moss Warranty Act, the FTC rules on mail-order merchandise, the door-to-sales regulation, the new Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and the Equal Credit Opportunity Act.	54:00
JA-246-8	<b>WORD PROCESSING, PART I</b> Speaker: Dr. James Kasprzak, Senior Management Analyst, The Adjutant General's Office, Word Processing Division.	46:00
JA-246-9	<b>WORD PROCESSING, PART II</b> A continuation of JA-246-8.	48:00
JA-247	<b>TRIAL AND APPELLATE PRACTICE, PART I</b> Speaker: Mr. Anthony J. Steinmeyer, Assistant Chief, General Litigation Section, Civil Division, Department of Justice, Washington, D.C. The speaker reviews the relationship of attorneys in the Civil Division, Department of Justice, with the United States Attorney and judge advocates who work in civil litigation. He outlines the current Department of Justice criteria for delegating civil cases to the	46:00

United States Attorney and gives insight into the screening process that determines whether an adverse decision in a government case is appealed. Numerous helpful hints are given for better trial results by the government attorney.

JA-248 TRIAL AND APPELLATE PRACTICE, PART II 38:00  
A continuation of JA-247.

**CRIMINAL LAW**

JA-328 MILITARY JUSTICE, PART II (TF 27-4986) 40:00

Designed as an introduction to the U.C.M.J., this program briefly examines the historical development of the U.C.M.J., presents the provisions of Articles 12, 13, 55 and 137, U.C.M.J., and explains a service member's rights under Article 138. It features a series of vignettes which provide explanations of Articles 2, 7, 8 and 14 and of all the punitive articles of the U.C.M.J., emphasizing those offenses which are unique to the military. Presentation of this program in conjunction with JA-302 (TF 27-4863) and JA-327 (TR 27-4821) and the instructional package accompanying TF 27-4986 meets the requirements of Military Justice Courses A and B.

JA-329 USE OF POLYGRAPH, PART I 60:00  
CW3 Frederick Link of the Polygraph Committee, Investigative Group, DALET, U.S. Army Military Police School, Fort McClellan, Alabama, discusses the use and application of the polygraph with demonstration.

JA-330 USE OF POLYGRAPH, PART II 51:00  
A continuation of JA-329.

**4. Obsolete Tapes.** The audio and video tapes listed below have been determined obsolete and released from the October 1977 Video and Audio Tape Catalog:

TAPE #	TITLE	PAGE
<b>Procurement Law</b>		
JA-104-1	PROCUREMENT ACCOUNTS—OVEROBLIGATIONS AND EXPENDITURES	4
JA-104-2 & JA-104-3	DOD BUDGET AND FINANCIAL SYSTEMS, PARTS I AND II	4
JA-104-4 & JA-104-5	TYPES OF APPROPRIATIONS AND THEIR USES, PARTS I AND II	4
JA-104-6	ADMINISTRATIVE CONTROL OF APPROPRIATED FUNDS	4
JA-104-7 & JA-104-8	THE ANTI-DEFICIENCY ACT, PARTS I AND II	5
Also		
JA-105-1	INTRODUCTION TO FISCAL LAW	5
JA-105-2	THE ANTI-DEFICIENCY ACT	5

## 23

JA-105-3 & JA-105-4	FUND MANAGEMENT SYSTEMS, PARTS I AND II	5
JA-105-5, JA-105-6 & JA-105-7	OBLIGATIONS OF APPROPRIATIONS, PARTS I, II AND III	5
JA-105-8 & JA-105-9	R. S. 3679 VIOLATION REPORT, PARTS I AND II	5 & 6
JA-105-10	EMERGENCIES, TRANSFERS, AND REPROGRAMMING	6
JA-105-11	THE OMB'S VIEW OF THE FISCAL PROCESS	6
Also.		
105-14	MINOR CONSTRUCTION	6
JA-105-15	MINOR CONSTRUCTION PROBLEMS	6
JA-105-16 & JA-105-17	FAMILY HOUSING, PARTS I AND II	6
JA-105-18	Closing	6

**Administrative and Civil Law-Video Tapes**

<i>Tape #</i>	<i>Title</i>	<i>Page</i>
JA-203 & JA-204	PERSONAL FINANCES, PARTS I AND II	11
JA-205	AFFIRMATIVE CLAIMS	11
JA-206 & JA-207	LAW OF FEDERAL EMPLOYMENT COURSE, PARTS I AND II	11 & 12
JA-208, JA-209, JA-210 & JA-211	INTRODUCTION TO LABOR-MANAGEMENT RELATIONS, PARTS I, II, III & IV	12
Also		
JA-503	LEADERSHIP SITUATIONS	29
JA-510	DRUG ABUSE—NINE-IN-ONE CONCEPTS (AFIF 213)	29
JA-511	ALCOHOLISM—OUT OF THE SHADOWS (AFIF 220)	30
JA-521 & JA-522	WORD PROCESSING SYSTEMS, PARTS I AND II	31

Also

**Administrative and Civil Law-Audio Tapes**

JA-A-202	FREEDOM OF INFORMATION	38
JA-A-203	THE PRIVACY ACT OF 1974	38
JA-A-208	DISSIDENT ACTIVITIES AND THE FIRST AMENDMENT	38

**5. NCDA Career and Executive Prosecutor Courses.** The National College of District Attorneys welcomes the attendance of experienced military counsel at the Career Prosecutor Course which they will be holding this summer in Houston, Texas. The Career Prosecutor Course is designed for the trial prosecutor and deals with the courtroom functions as well as the out of court interests of the trial prosecutor. The Executive Prosecutor Course, scheduled for 11-17 June 1978 is directed to the senior policy maker in the prosecutor's office. NCDA recommends the course for the chief of military justice in a large office or for a staff judge advocate with a heavy criminal justice load. The Executive Prosecutor Course is conducted as a forum. For more information on either course, contact the National College of District Attorneys, College of Law, University of Houston, Houston, Texas, 77004. Phone (713) 749-1571.

**6. National Archives Plans Legal History Conference.** New research that examines the interaction of American law and society and the historical records that support such research will be discussed at the 18th annual National Archives conference, to be held 21-22 September in Washington, D.C.

Entitled "The Law and American Society: New Historical Perspectives and Resources," the conference in the Archives Building will focus on the law and black protests, female crime, use of natural resources, legal biography, and privacy issues in the use of legal records.

Archivists and historians will explain how records held by the National Archives, including its regional archives branches and Presidential Libraries, can be used for research. These include records of the Supreme Court and lower federal courts, the Department of Justice, and the military justice system.

Program directors for the two-day symposium are Clarence F. Lyons Jr., head of the Archives' Legislative, Judicial and Fiscal Branch, and R. Michael McReynolds, a staff assistant to the Archivist of the United States.

For registration and other information, write: Legal Conference; Education Division

(NE), National Archives and Records Service, Washington, D.C. 20408.

#### **7. TJAGSA CLE Courses.**

April 3-7: 17th Federal Labor Relations Course (5F-F22).  
 April 3-7: 4th Defense Trial Advocacy Course (5F-F34).  
 April 10-14: 40th Senior Officer Legal Orientation Course (F5-F1).  
 April 17-21: 8th Staff Judge Advocate Orientation Course (5F-F52).  
 April 17-28: 1st International Law I Course (5F-F40).  
 April 24-28: 5th Management for Military Lawyers Course (5F-F51).  
 May 1-12: 75th Procurement Attorneys' Course (5F-F10).  
 May 8-11: 7th Environmental Law Course (5F-F27).  
 May 15-17: 2d Negotiations Course (5F-F14).  
 May 15-19: 8th Law of War Instructor Course (5F-F42).  
 May 22-June 9: 17th Military Judge Course (5F-F33).  
 June 12-16: 41st Senior Officer Legal Orientation Course (5F-F1).  
 July 24-August 4: 76th Procurement Attorneys' Course (5F-F10).  
 August 7-11: 8th Law Office Management Course (7A-713A).  
 August 7-18: 2d Military Justice II Course (5F-F31).  
 August 21-25: 42d Senior Officer Legal Orientation Course (5F-F1).  
 August 28-31: 75th Fiscal Law Course (5F-F12).  
 September 18-29: 77th Procurement Attorneys' Course (5F-F10).

**8. TJAGSA Course Prerequisites and Substantive Content.** This list of courses is in numerical order by course number.

#### **SENIOR OFFICERS' LEGAL ORIENTATION COURSE (5F-F1)**

*Length:* 4½ days.

*Purpose:* To acquaint senior commanders with installation and unit legal problems encountered in both the criminal and civil law field.

*Prerequisites:* Active duty and reserve component commissioned officers in the grade of Colonel or Lieutenant Colonel about to be assigned as installation commander or deputy; service school commandant; principal staff officer (such as chief of staff, provost marshal, inspector general, director of personnel) at division, brigade or installation levels; or as a

brigade commander. As space permits, those to be assigned as battalion commanders may attend. Security clearance required: None.

**Substantive Content:** Administrative and Civil Law: Judicial review of military activities, installation management, labor-management relations, military personnel law, nonappropriated funds, investigations, legal assistance, claims and litigation.

**Criminal Law:** Survey of legal principles relating to search and seizure, confessions, and nonjudicial punishment. Emphasis is placed on the options and responsibilities of convening authorities before and after trial in military justice matters, including the theories and practicabilities of sentencing.

**International Law:** Survey of Status of Forces Agreements and law of war.

#### **PROCUREMENT ATTORNEYS' COURSE (5F—F10)**

**Length:** 2 weeks.

**Purpose:** To provide basic instruction in the legal aspects of government procurement at the installation level. Completion of this course also fulfills one-half of the requirements of Phase VI of the nonresident/resident Judge Advocate Officer Advanced Course and covers one-half of the material presented in the USAR School Judge Advocate Officer Advanced Course (BOAC) ADT Phase VI.

**Prerequisites:** Active duty or reserve component military attorneys or appropriate civilian attorneys employed by the U.S. government, with six months' or less procurement experience. Security clearance required: None.

**Substantive Content:** Basic legal concepts regarding the authority of the government and its personnel to enter into contracts; contract formation (formal advertising and negotiation), including appropriations, basic contract types, service contracts, and socio-economic policies; contract performance, including modifications; disputes, including remedies and appeals.

#### **PROCUREMENT ATTORNEYS' ADVANCED COURSE (5F—F11)**

**Length:** 1 week.

**Purpose:** To provide continuing legal education and advanced expertise in the statutes and regulations governing government procurement. To provide information on changes at the policy level.

**Prerequisites:** Active duty or reserve component military attorneys or appropriate civilian attorneys employed by the U.S. government. Applicants must have successfully completed the Procurement Attorneys' Course (5F-10), or equivalent training, or have at least one year's experience as a procurement attorney. Security clearance required: None.

**Substantive Content:** Advanced legal concepts arising in connection with the practical aspects of incentive contracting, funding, competitive negotiation, socio-economic policies, government assistance, state and local taxation, modifications, weapons system acquisition, truth in negotiations, terminations, labor relations problems, contract claims, and litigation. Course will normally be theme oriented to focus on a major area of procurement law. Intensive instruction will include current changes in the laws, regulations and decisions of courts and boards.

#### **FISCAL LAW COURSE (5F—F12)**

**Length:** 3½ days.

**Purpose:** To provide a basic knowledge of the laws and regulations governing the obligation and expenditure of appropriated funds and an insight into current fiscal issues within the Department of the Army. The course covers basic statutory constraints and administrative procedures involved in the system of appropriation control and obligation of funds within the Department of Defense. This course emphasizes the methods contracting officers and legal and financial personnel working together can utilize to avoid over-obligations.

*Prerequisites:* Active duty commissioned officer of an armed force, or appropriate civilian employee of the U.S. government actively engaged in procurement law, contracting or administering funds available for obligation on procurement contracts. Must be an attorney, contracting officer, comptroller, finance and account officer, budget analyst or equivalent. Attendees should have completed TJAGSA Procurement Attorney's Course, a financial manager's course, a comptrollership course or equivalent.

*Substantive Content:* Practical legal and administrative problems in connection with the funding of government contracts. Basic aspects of the appropriations process, administrative control of appropriated funds, the Anti-Deficiency Act, industrial and stock funds, and the Minor Construction Act will be covered.

#### **ALLOWABILITY OF CONTRACT COSTS COURSE (5F-F13)**

*Length:* 2½ days.

*Purpose:* The Allowability of Contract Costs Course is a basic course designed to develop an understanding of the nature and means by which the government compensates contractors for their costs. The course focuses on three main areas: (1) basic accounting for contract costs; (2) the Cost Principles of ASPR § 15; and (3) the Cost Accounting Standards Board and the Costs Accounting Standards. The course is a mixture of lectures and panel discussions aimed at covering substantive and practical issues of contract costs. This course is not recommended for attorneys who are experienced in application of cost principles.

*Prerequisites:* Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. government, with at least one year of procurement experience. Applicants must have successfully completed the Procurement Attorneys' Course (5F-F10) or equivalent.

*Substantive Content:* This introductory course will focus on three main areas: functional cost

accounting terms and application, the Cost Principles, and Cost Accounting Standards.

#### **NEGOTIATIONS COURSE (5F-F14)**

*Length:* 2½ days.

*Purpose:* The Negotiations Course is designed to develop advanced understanding of the negotiated competitive procurement method. The course focus on the attorney's role in negotiated competitive procurement, including: (1) when and how to use this method; (2) development of source selection criteria; (3) source selection evaluation process; (4) competitive range; (5) oral and written discussions; and (6) techniques.

*Prerequisites:* Active duty or reserve component military attorney, or appropriate civilian attorney employed by the U.S. government, with at least one, but not more than five years of procurement experience. Applicants must have successfully completed the Procurement Attorneys' Course (5F-F10) or equivalent. Security clearance required: None.

*Substantive Content:* The course will focus on solicitation and award by negotiation including selection of the procurement method, use of the negotiation process in the development of source selection, discussion and techniques.

#### **PROCUREMENT LAW WORKSHOP (5F-F15)**

*Purpose:* The workshop provides an opportunity to examine in the light of recent developments in the law and discuss in depth current procurement problems encountered in installation SJA offices. Attorneys will be asked to submit problems in advance of attendance. These will be collected, researched and arranged for seminar discussion under the direction of the procurement law faculty.

*Prerequisites:* Active duty or reserve component military attorneys or appropriate civilian attorneys employed by the U.S. government with not less than twelve months procurement experience who are currently engaged in the

practice of procurement law at installation level. Security clearance required: None.

*Substantive Content:* Discussion of current developments in procurement law and their application to the problems currently experienced in installation level procurement.

### **FEDERAL LABOR RELATIONS COURSE (5F-F22)**

*Length:* 4½ days.

*Purpose:* To provide a basic knowledge of personnel law pertaining to civilian employees, and labor-management relations.

*Prerequisites:* Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. government. Reserve officers must have completed the Judge Advocate Officer Advanced Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area or have attended the Basic or Advanced Course. Security clearance required: None.

*Substantive Content:* Law of Federal Employment: Hiring, promotion and discharge of employees under the FPM and CPR; role of the Civil Service Commission; procedures for grievances, appeals and adverse actions; personal rights of employees; and equal employment opportunity complaints.

*Federal Labor-Management Relations:* Rights and duties of management and labor under Executive Order 11491, as amended, and DoD Directive 1426.1; representation activities; negotiation of labor contracts; unfair labor practice complaints; administration of labor contracts and procedures for arbitration of grievances.

*Government Contractors:* An overview of the responsibility of military officials when government contractors experience labor disputes.

### **LEGAL ASSISTANCE COURSE (5F-F23)**

*Length:* 3½ days.

*Purpose:* A survey of current problems in Army legal assistance providing knowledge of important legal trends and recent developments involved in areas of legal assistance rendered to service members.

*Prerequisites:* Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. government. Reserve officers must have completed the Judge Advocate Officer Advanced Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area or have attended the Basic or Advanced Course. Security clearance required: None.

*Substantive Content:* New developments in the areas of legal assistance rendered military personnel including consumer protection, family law, state and federal taxation, civil rights, survivor benefits, bankruptcy, and small claims. The instruction is presented with the assumption that students already have a fundamental knowledge of legal assistance.

### **MILITARY ADMINISTRATIVE LAW DEVELOPMENTS COURSE (5F-F25)**

*Length:* 3½ days.

*Purpose:* To provide knowledge of important legal trends and recent developments in military administrative law, judicial review of military actions, and decisions relating to the operation of military installations.

*Prerequisites:* Active duty or reserve component military attorney or appropriate civilian attorney employed by the U.S. government. Reserve officers must have completed the Judge Advocate Officer Advanced Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area. Security clearance required: None.

*Substantive Content:* New developments in the areas of military administrative law including military personnel, civilian personnel, military assistance to civil authority, legal basis of command (military installation law) and nonappropriated funds, with particular emphasis on developing case law in the areas of administrative due process, vagueness, and constitutionality of regulations, including first and fourteenth amendment considerations. Developments in the area of judicial review of military activities, including procedures for control and management of litigation involving the Army as required by AR 27-40. The instruction is presented with the assumption that students already have a fundamental knowledge of the areas covered.

#### **CLAIMS COURSE (5F-F26)**

*Length:* 3½ days.

*Purpose:* To provide advanced continuing legal education in claims and instruction in recent judicial decisions, statutory changes and regulatory changes affecting claims.

*Prerequisites:* U.S. Army active duty or reserve component attorney or appropriate civilian attorney employed by the Department of the Army. Reserve officers must have completed the Judge Advocate Officer Advanced Course. Although appropriate for reservists, enrollment is not recommended unless the individual is working in the area covered by the course. The student is expected to have experience in the subject area. Security clearance required: None.

*Substantive Content:* Claims against the government. Analysis of claims relating to Military Personnel and Civilian Employees Claims Act, Federal Tort Claims Act, National Guard Claims Act, Foreign Claims Act, and Nonscope Claims Act. Recent developments in foregoing areas will be emphasized. Claims in favor of the government. Analysis of Federal Claims Collection Act and Federal Medical Care Recovery Act with emphasis on recent developments.

#### **ENVIRONMENTAL LAW COURSE (5F-F27)**

*Length:* 3½ days.

*Purpose:* To provide instruction in the basic principles of environmental law as they affect federal installations and activities.

*Prerequisites:* Active duty or reserve component military lawyer or appropriate civilian attorney employed by the U.S. government. Reserve officers must have completed the Judge Advocate Officer Basic Course. Security clearance required: None.

*Substantive Content:* Basic principles of environmental law as it applies to military installations, including the National Environmental Policy Act and its requirement for preparation of environmental impact statements, the Clean Air Act, and the Federal Water Pollution Control Act. The course also includes a brief discussion of other environmental laws and the roles of the Environmental Protection Agency and the Army Corps of Engineers in environmental regulation.

#### **GOVERNMENT INFORMATION PRACTICES COURSE (5F-F28)**

*Length:* 2½ days.

*Purpose:* To provide basic knowledge of the requirements of the Freedom of Information Act and the Privacy Act.

*Prerequisites:* Active duty or reserve component military lawyer or appropriate civilian attorney employed by the U.S. government. Reserve officers must have completed the Judge Advocate Officer Basic Course. Security clearance required: None.

*Substantive Content:* The disclosure requirements of the Freedom of Information Act; the exemptions from disclosure and their interpretation by the federal courts; the restrictions on the collection, maintenance, and dissemination of personal information imposed by the Privacy Act; the relationship between the two Acts and their implementation by the Army.

### LITIGATION COURSE (5F-F29)

*Length:* 3½ days.

*Purpose:* To provide basic knowledge and skill in handling litigation against the United States and officials of the Department of Defense in both their official and private capacities.

*Prerequisites:* Active duty military lawyer or civilian attorney employed by the U.S. government. Enrollment is not recommended unless the individual is responsible for monitoring, assisting or handling civil litigation at his or her installation. Anyone who has completed the Army Judge Advocate Officer Advanced Course (resident) within two years of the date of this CLE course is ineligible to attend. Security clearance required: None.

*Substantive Content:* The following areas will be covered: Reviewability and justifiability, federal jurisdiction and remedies, scope of review of military activities, exhaustion of military remedies, Federal Rules of Civil Procedure, civil rights litigation, FTCA litigation, and official immunity. There will be a practical exercise in the preparation of litigation reports and pleadings.

### MILITARY JUSTICE II COURSE (5F-F31)

*Length:* 2 weeks.

*Purpose:* To provide a working knowledge of the duties and responsibilities of field grade Judge Advocate General's Corps officers in the area of military criminal law and trial advocacy. This course is specifically designed to fulfill one-half of the requirements of Phase II of the nonresident/resident Judge Advocate Officer Advanced Course. It also covers one-half of the material presented in the USAR School Judge Advocate Officer Advanced Course (BOAC) ADT Phase II.

*Prerequisites:* Active duty or reserve component military attorney, 02-04. Although appropriate for active duty personnel, enrollment is not recommended unless the individual is working toward completion of the Advanced course

by correspondence. Security clearance required: None.

*Substantive Content:* Pretrial procedure, trial procedure, post trial procedures and review, appellate review.

### CRIMINAL TRIAL ADVOCACY COURSE (5F-F32)

*Length:* 4½ days.

*Purpose:* To improve and polish the experienced trial attorney's advocacy skills.

*Prerequisites:* Active duty military attorney certified as counsel under Article 27b(2) U.C.M.J., with at least six months' experience as a trial attorney.

*Substantive Content:* Intensive instruction in trial practice to include problems confronting trial and defense counsel from pretrial investigation through appellate review.

### MILITARY JUDGE COURSE (5F-F33)

*Length:* 3 weeks.

*Purpose:* To provide military attorneys advance schooling to qualify them to perform duties as full-time military judges as courts-martial.

*Prerequisites:* Active duty or reserve component military attorneys. Security clearance required: None. Army officers are selected for attendance by The Judge Advocate General.

*Substantive Content:* Conference, panel, and seminar forums cover substantive military criminal law, defenses instructions, evidence, trial procedure, current military legal problems, and professional responsibility.

### DEFENSE TRIAL ADVOCACY COURSE (5F-F34)

*Length:* 4½ days.

*Purpose:* To improve and polish the experienced trial attorney's defense advocacy skills.

*Prerequisites:* Active duty military attorney certified as counsel under Article 27b(2),

U.C.M.N., with 6-12 months experience as a trial attorney and with present or prospective immediate assignment as a defense counsel at the trial level. Security clearance required: None.

*Substantive Content:* Conference, panel discussions, seminars, and videotape exercises cover military criminal law substantive and procedural topics. Evidence, professional responsibility, the role and duties of a defense counsel, extraordinary writs, and trial advocacy are included to provide polish to defense advocates.

### **CRIMINAL LAW NEW DEVELOPMENTS (5F-F35)**

*Length:* 2 days (15 hours).

*Purpose:* To provide counsel and criminal law administrators with information regarding recent developments and trends in military criminal law. This course is revised annually.

*Prerequisites:* This course is limited to active duty judge advocates and civilian attorneys who serve as counsel or administer military criminal law in a judge advocate office. Students must not have attended TJAGSA resident criminal law CLE, Basic or Advanced courses within the twelve month period immediately preceding the date of the course.

*Substantive Content:* Government/defense counsel post trial duties; speedy trial; SIDPERS; pretrial agreements; extraordinary writs; 5th Amendment and Article 31; applications of the privilege against self incrimination and issues in self incrimination; search and seizure; recent trends in the United States Court of Military Appeals; subject matter jurisdiction; witness production; mental responsibility; military corrections.

### **INTERNATIONAL LAW I COURSE (5F-F40)**

*Length:* 2 weeks.

*Purpose:* To provide knowledge of the sources, interpretation and application of international law. This course fulfills approximately one-

third of the requirements of Phase VI of the nonresident/resident Judge Advocate Officer Advanced Course. It also covers approximately one-third of the materials presented in the USAR School Judge Advocate Officer Advanced Course (BOAC) ADT Phase VI.

*Prerequisites:* Active duty or reserve component military attorney, 02-04, or appropriate civilian attorney employed by the U.S. government. Enrollment of active duty personnel is not recommended unless the individual is working toward completion of the Advanced Course by correspondence. Security clearance required: None.

*Substantive Content:* The International Legal System: nature, sources and evidences of international law; state rights and responsibilities; recognition; nationality; the United Nations and the International Court of Justice; international rules of jurisdiction; status of forces agreements, policies, practices and current developments; foreign claims operations; overseas procurement operations; and private aspects of international law.

### **LAW OF WAR INSTRUCTOR COURSE (5F-F42)**

*Length:* 4½ days.

*Purpose:* To prepare officers to present Law of War instruction by providing basic knowledge of the law of war and working knowledge of the method of instruction skills necessary for the presentation of effective instruction.

*Prerequisites:* Active duty or reserve component military attorney or appropriate civilian attorney employed by the Department of Defense, and officers with command experience who are assigned the responsibility of presenting formal instruction in the Geneva Conventions of 1949 and Hague Convention No. IV of 1907. The attorney and the officer with command experience must attend the course as a teaching team. Security clearance required: None.

*Substantive Content:* International customs and treaty rules affecting the conduct of U.S.

forces in military operations in all levels of hostilities; the Hague and Geneva Conventions and their application in military operations and missions, to include problems on reporting and investigation of war crimes, treatment and control of civilians, and the treatment and classification of prisoners of war; the substantial change to the law of war impending as a result of the recent adoption by the Geneva Conference of the Protocols Updating the Law of War. Special emphasis is placed on the preparation of lesson plans, methods of instruction, and appropriate use of training materials available for law of war instruction. Participation in team teaching exercises is required.

This course is designed to fulfill the requirement of AR 350-216 that commanders assure that formal law of war instruction at their unit/installation be conducted by a qualified team consisting of a judge advocate officer and an officer with command experience, preferably in combat. Commanders and staff judge advocates should assign high priority to the qualification and maintenance of a law of war teaching team especially in view of the substantive law of war changes and expanded instructional requirements bound to result from the new Protocols.

Unit/installation SJA's should coordinate with the appropriate local commander or training officer for the qualification of law of war teaching teams adequate to local training demands.

#### **MANAGEMENT FOR MILITARY LAWYERS COURSE (5F-F51)**

*Length:* 4½ days.

*Purpose:* To provide military lawyers with basic concepts of military law office management and supervision.

*Prerequisites:* Active duty military attorney in or about to assume a supervisory position in a judge advocate office. Security clearance required: None.

*Substantive Content:* Army management principles and policies, management theory and practice, formal and informal organizations,

motivational management styles, communication, and civilian law office management techniques. A review of JAGC personnel management.

#### **STAFF JUDGE ADVOCATE ORIENTATION COURSE (5F-F52)**

*Length:* 4½ days.

*Purpose:* To inform newly assigned staff judge advocates of current trends and developments in all areas of military law.

*Prerequisites:* Active duty field grade Army judge advocate whose actual or anticipated assignment is as a staff judge advocate or deputy staff judge advocate of a command with general court-martial jurisdiction. Security clearance required: None.

Selection for attendance is by the Judge Advocate General.

*Substantive Content:* Major problem areas and new developments in military justice, administrative and civil law, procurement, and international law.

#### **LAW OFFICE MANAGEMENT COURSE (7A-F713A)**

*Length:* 4½ days.

*Purpose:* To provide a working knowledge of the administrative operation of a staff judge advocate office and principles involved in managing its resources.

*Prerequisites:* Active duty or reserve component warrant officer or senior enlisted personnel of an armed force serving in grade E-8/E9 and currently performing or under orders to an assignment which will require the performance of law office management duties. Personnel who have completed this course within the two-year period immediately preceding the date of the course are not eligible to attend. Security clearance required: None.

*Substantive Content:* Office management; management of military and civilian personnel; criminal law administrative procedures, admin-

istrative law procedures, Army management system; office management of a law office, and fundamentals of management theory.

## 9. Civilian Sponsored CLE Courses.

### APRIL

3-4: PLI, Occupational Safety and Health Law, Americana Hotel, New York, NY. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$175. Course Handbook only: \$20.00.

3-4: PLI, Federal Civil Rights Practice, Stanford Court Hotel, San Francisco, CA. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$150.

3-5: Federal Publications, Practical Construction Law, Atlanta, GA. Contact: Miss J.K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

3-5: Univ. of Santa Clara School of Law—Federal Publications, Government Contract Costs, Sheraton National, Arlington, VA. Contact: Miss J.K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

3-7: Univ. of Santa Clara School of Law—Federal Publications, The Skills of Contract Administration, The Cascades, Williamsburg, VA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$575.

6-7: PLI, 8th Annual Employee Benefits Institute, Stanford Court Hotel, San Francisco, CA. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$185.

6-7: PLI, Legal Aspects of Union Organizational Campaigns, Mark Hopkins Hotel, No. 1 Nob Hill, San Francisco, CA 94108. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$175.

6-9: 9th National Conference on Women and the Law, Peachtree Plaza Hotel, Atlanta, GA. Contact: 9th National Conference on Women and the Law, Women Law Students' Association, Univ. of Georgia School of Law, Athens, GA 30602. Phone: (404) 542-7669.

7-8: PLI, 10th Annual Criminal Advocacy Institute: Testing Devices, Sir Francis Drake Hotel, San Francisco, CA. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$160.

9-12: NCDA, Crimes Against Persons, Orlando, FL. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749-1571.

10-12: Loyola Univ. School of Law—Federal Publications, Competing for Contracts, Sheraton National, Ar-

lington, VA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

10-12: Federal Publications, Competing for Contracts, Washington, D.C. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

10-12: Federal Publications, Practical Labor Law, Berkeley, CA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, D.C. 20006. Phone: (202) 337-7000. Cost: \$475.

10-14: George Washington Univ., Cost Reimbursement Contracting, George Washington Univ. Library, 2130 H St. NW, Room 729, Washington, DC. Contact: Government Contracts Program, George Washington Univ., 2000 H St. NW, Washington, DC 20052. Phone: (202) 676-6815. Cost: \$475.

11-13: LEI, Seminar for Attorney-Managers, Washington, DC. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

12-14: PLI, Equal Employment Opportunity Compliance, Stanford Court Hotel, San Francisco, CA. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$200.

13-14: PLI, Strikes, Stoppages and Boycotts, Host International Hotel, P.O. Box 24107, Tampa, FL 33622. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$175.

17-18: Georgetown Univ. Continuing Management Education Seminars, E.E.O./A.A. (Equal Employment Opportunity/Affirmative Action), Ground Floor, RCA Building, 1901 N. Moore St., Rosslyn, VA. Contact: Continuing Management Education—SSCE, Georgetown Univ., Washington, DC 20057. Phone: (703) 525-6300. Cost: \$250.

17-18: Federal Publications, Negotiating Collective Bargaining Agreements, Las Vegas, NV. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

17-28: LEI, Procurement Law Course, Washington, DC. Contact: Legal Educational Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

19-21: Federal Publications, Medical Malpractice, Los Angeles, CA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

23-28: NCDA, Advanced Organized Crime, Dallas, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749-1571.

24-25: PLI, Federal Civil Rights Practice, New York Hilton Hotel, New York, N.Y. Contact: Practising Law

Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$150.

26-28: Univ. of Santa Clara School of Law—Federal Publications, Government Contract Costs, Holiday Inn, Golden Gateway, San Francisco, CA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

27-28: Federal Publications, Legal Malpractice, Williamsburg, VA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

27-28: PLI, 8th Annual Employee Benefits Institute, New York Hilton Hotel, New York, NY. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$185.

27-28: PLI, Advanced Will Drafting, Americana Hotel, New York, NY. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$185.

#### MAY

1-2: Federal Publications, Terminations of Government Contracts, Las Vegas, NV. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

1-2: PLI, Occupational Safety and Health Law, Stanford Court Hotel, San Francisco, CA. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$175. Course Handbook only: \$20.

1-3: George Washington Univ., Patents and Technical Data [government procurement treatment of patents and technical data in the purchase of supplies and services], George Washington Univ. Library, 2130 H St. NW, Room 729, Washington, DC. Contact: Government Contracts Program, George Washington Univ., 2000 H St. NW, Washington, DC 20052. Phone: (202) 676-6815. Cost: \$400.

1-5: LEI, Administrative Law Judges and the Regulatory Process Seminar, Williamsburg, VA. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

3-5: Federal Publications, Construction Contract Litigation, Washington, DC. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

3-6: American College of Legal Medicine, Annual Conference, Stanford Court Hotel, San Francisco, CA. Contact: Betty Hanna, Executive Secretary, American College of Legal Medicine, 1340 N. Astor St., Suite 2608, Chicago, IL 60610.

4-6: ALI-ABA, Energy and the Law: Problems and Challenges of the Late 70's, Denver, CO. Contact: Donald

M. Maclay, Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 387-3000.

8-9: Federal Publications, Negotiating Collective Bargaining Agreements, Williamsburg, VA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

8-10: George Washington Univ.—Federal Publications, Equal Employment Claims & Litigation, Washington, DC. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

8-10: Federal Publications, Small Purchasing, Seattle, WA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

8-11: Federal Publications, Fundamentals of Government Contracting, Berkeley, CA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$525.

9-11: LEI, Trial Practice Seminar, Washington, DC. Contact: Legal Education Institute—TOG, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

11-12: Federal Publications, Procurement for Secretaries, Seattle, WA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

12-13: ALI-ABA, Construction Contracting in the Middle East: Problems and Solutions, Washington, DC. Contact: Donald M. Maclay, Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: (215) 387-3000.

15-17: Federal Publications, Practical Labor Law, Washington, DC. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

16-18: LEI, Environmental Law Seminar, Washington, DC. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: (202) 254-3483.

20-27: CPI, Trial Advocacy Seminar, Ramada O'Hara Inn, Chicago, IL. Contact: Court Practice Institute, Inc., 4801 W. Peterson Ave., Chicago, IL 60646. Phone: (312) 725-0166. Cost: \$700.

21-26: NCDA, Prosecutor's Office Administrator Course, Part I, Houston, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: (713) 749-1571.

22-23: Federal Publications, Terminations of Government Contracts, San Francisco, CA. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

22-24: Federal Publications, Procurement for Lawyers, Washington, DC. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications, Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$475.

22-26: International Association of Forensic Sciences, Meeting, Wichita, KS. Contact: President, International

Association of Forensic Sciences, P.O. Box 8282, Wichita, KS 67208.

25-26: FBA, Openness in Government IV, Mayflower Hotel, Washington, DC. Contact: Conference Secretary, Federal Bar Association, Suite 420, 1815 H St. NW, Washington, DC 20006. Phone: (202) 638-0252.

25-26: Federal Publications, Legal Malpractice Houston, TX. Contact: Miss J. K. Van Wycks, Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: (202) 337-7000. Cost: \$400.

## Recent Developments in the Taxation of Alcoholic Beverages Sold by an Army Non-Appropriated Fund Instrumentality

*Tax and Property Law Branch, Procurement Law Division,  
OTJAG*

The two *Mississippi Tax Commission* cases, *United States v. Mississippi Tax Commission*, 412 U.S. 363 (1973), and *United States v. Mississippi Tax Commission*, 421 U.S. 599 (1975), left open the question whether a state's regulation of the federal government's procurement of alcoholic beverages constituted an interference with the federal government in violation of the Supremacy Clause of the federal constitution (See footnote 5, 421 U.S. 599, at 604). The recent decision of the Federal District Court for the Middle District of Louisiana, *United States v. State of Louisiana*, Civil Number 77-348 (M.D. La. decided 9 Sept. 1977), answered this question and enjoined the state of Louisiana "from regulating or interfering with or attempting to regulate or interfere with procurement of alcoholic beverages from out-of-State vendors by activities and instrumentalities of the plaintiff's military services."

The Louisiana suit was brought by the United States when a Navy non-appropriated fund instrumentality (NAFI) purchased a quantity of alcoholic beverages from a vendor situated outside the State of Louisiana. The vendor shipped the alcoholic beverages and notified officials of the Louisiana Department of Revenue and Taxation of the shipment. Thereafter the State of Louisiana took the position that NAFIs could not purchase liquor from vendors situated outside the State of Louisiana

without obtaining a permit from the Louisiana Commission on Alcoholic Beverage Control and without paying a \$2.50 per gallon tax (to be remitted to the Department) and shipments not in compliance with these requirements were prohibited.

Upon the plaintiff's motion for an injunction and upon an agreed Statement of Facts, the court issued a preliminary injunction prohibiting (1) assessment and collection of taxes on or by virtue of NAFI procurement from out-of-state vendors; and (2) regulation or interference with NAFI procurement from out-of-state vendors. The decision also, of interest, specifically states "that nothing in the instant Permanent Injunction shall be construed to prohibit the defendants from challenging or attempting to challenge in any way procurement of alcoholic beverages by independent contractors of the United States, its agencies or instrumentalities, or from challenging or attempting to challenge the legality of transactions in alcoholic beverages involving unauthorized persons." The effect of this decision will be to permit military club systems and package stores in Louisiana to purchase alcoholic beverages without paying a State tax of \$2.50 per gallon, equal to \$7.50 per case for most bottle sizes. Since these significant savings cannot be passed to customers of package stores beyond the 10 percent limit below civilian store prices, the increase in package store

earnings will be distributed to installation clubs and morale support programs.

Following the Louisiana decision, from which an appeal was not taken, representatives of this office have met with Navy and Air Force JAG personnel to determine what action, if any, should now be taken in those states which continue to prohibit out-of-state procurement.

We will be advising the commands involved as soon as possible. Should any problems come to the attention of staff judge advocates, it is requested that immediate contact be made with OTJAG (DAJA-PL, ATTN: Major Reres). Under no circumstances will contact with state authorities be made without prior OTJAG approval.

## New Minor Construction Act

*Captain Glenn Monroe, Procurement Law Division, TJAGSA*

On 1 October 1978 significant changes to the Minor Construction Act (10 U.S.C. § 2674 (1970)) will become effective. These changes, embodied in Public Law No. 95-82, include an increase in dollar limits, elimination of the necessity for an urgency or self-compensation determination, and a requirement to notify Congress of projects costing more than \$300,000.

The principal objective of this article is to provide early notice of the amendments to the statute. To properly set the stage, however, a review of the current law is helpful. It is most easily explained by an examination according to three monetary categories: \$0-\$75,000; \$75,000-\$200,000; and \$200,000-\$400,000.

Funds from two appropriations are made available by the statute to cover these categories—Operation and Maintenance (O&M) and Military Construction (MCA). Additional instructions on the use of these funds is provided in Department of Defense Directive No. 7040.2, Program for Improvement in Financial Management in the Area of Appropriations for Acquisition and Construction of Military Real Property (18 Jan. 1961). However, Army Reg. No. 415-35, Minor Construction (18 May 1976) picks up the information contained therein, making reference to the Directive unnecessary. The regulation also introduces important restrictions and therefore merits close attention.

For example, the statute *allows* use of O & M, as well as MCA funds, for minor construction projects costing not more than \$75,000. Paragraph 2-1d, AR 415-35, *requires*

use of O & M funds in the \$0 to \$75,000 range unless advance approval for use of MCA funds has been granted by HQDA (DAEN-ZC). Approval for expenditures in this first minor construction project category is at Operating Agency level (*e.g.*, TRADOC, FORSCOM, etc.—*see* paragraph 1-3o, AR 415-35) although paragraph 2-4, AR 415-35, allows operating agency commanders to delegate as much of their authority as they desire.

To fully appreciate the significance of using O & M, as well as MCA funds, for minor construction the definitions of "construction" and "project" must be considered. Paragraph 1-3d, AR 415-35, defines construction as "the erection, installation, or assembly of a *new facility*; the addition, expansion, extension, alteration, conversion, or replacement of an *existing facility*; or the *relocation of a facility* from one installation to another." (Emphasis added.)

With respect to existing facilities additional explanation is needed. Addition, expansion, extension, alteration, and conversion are also defined in paragraph 1-3, AR 415-35. The first three terms are described as referring to "a physical increase to a real property facility which adds to an overall external dimension of the facility." The term alteration is defined as "the work required to adjust interior arrangements or other physical characteristics of an existing facility or relocation within an installation, so that it may be more effectively adapted to or utilized for its *presently designated functional purpose . . .*" Conversion, on the other hand, is described as "the work required to ad-

just interior arrangements or other physical characteristics . . . so that it may be used for a new functional purpose . . . ”

To complete the definition it is important to note that paragraph 1-2e, AR 415-35, declares that “work defined in AR 420-10 . . . as maintenance and repair is not considered construction under the provisions of this regulation.”

The other key term which must be defined is project. Paragraph 1-3f, AR 415-35, informs that it is “a single undertaking involving construction applicable to one or more real property facilities which will include all construction work, land acquisition, and items of installed equipment necessary to accomplish a specific purpose and produce a complete and usable improvement to a real property facility.” (Emphasis added.) This language has been included in the amendment to the minor construction act.

The second monetary category (\$75,000 to \$200,000 per minor construction project) makes mandatory the use of MCA funds. In addition, the statute requires prior approval by the Secretary of the Army and the project must be either urgent or one which will, within three years following completion of the project, result in savings in maintenance and operations costs in excess of the cost of the project. Urgency is discussed in paragraph 1-3h, AR 415-35.

A construction project will be considered as urgent when, because of an existing or developing condition, the project cannot be delayed for inclusion in future military construction legislation. Normally, consideration of economy, efficiency, welfare or morale alone is not sufficient justification for considering a project as urgent.

The highest monetary category (\$200,000 to \$400,000 per minor construction project) involves the same requirements as the second category (i.e., MCA funds and either an urgent or a three year self-compensating project) except prior approval of the Secretary of Defense is necessary.

Although on 1 October 1978 the general framework outlined above will remain, significant modifications with respect to dollar limits, urgency and self-compensating determinations, and congressional notification will take effect. Again, the easiest approach to understanding the new statute lies in a monetary subdivision; here, four categories are used: \$0-\$100,000; \$100,000-\$300,000; \$300,000-\$400,000; and \$400,000-\$500,000.

As under present law, the lowest monetary group (\$0-\$100,000 per minor construction project—up from the current \$75,000 limit) concerns the use of O & M funds. There is little doubt the current regulatory preference for using O & M funds whenever possible (i.e., in projects up to \$100,000) will still obtain. The amended statute merely allows use of O & M appropriations to accomplish minor construction projects.

For all projects exceeding \$100,000, only MCA funds are available. However, the amended statute contains no requirement that the project be urgent or self-compensating. Further, it now appears unlikely that these criteria will be imposed by either the Department of Defense or the Department of the Army.

Deleted as well, in the \$100,000 to \$300,000 category, is the necessity for prior approval by either the Secretary of Defense or the Secretary of the Army. It is likely, though, that Department of the Army level approval will be necessary. Prior approval by the Secretary of the Army must be obtained for projects in the \$300,000 to \$400,000 range. Further, the Committees on Armed Services and Appropriations of the Senate and House of Representatives are to be notified in writing at least 30 days before any funds are obligated for projects costing more than \$300,000.

In the highest monetary bracket (\$400,000 to \$500,000 per minor construction project) the same rules as applied to the \$300,000 to \$400,000 category obtain except that prior approval of the Secretary of Defense is necessary.

The following statements serve to summarize

the changes brought about by the amendments to the Minor Construction Act, to take effect 1 October 1978.

1. The ceiling on minor construction projects has been raised from \$400,000 to \$500,000.

2. There is no longer any statutory requirement for a determination of urgency or self-compensation.

3. There is a 30 day Congressional notice requirement for all projects costing more than \$300,000.

4. Projects costing between \$300,000 and \$400,000 must have prior Secretary of the Army approval and those from \$400,000 to

\$500,000 must have prior Secretary of Defense approval.

5. The limit on minor construction projects for which O & M funds may be expended has been increased from \$75,000 to \$100,000.

Exceeding the limitations of the Minor Construction Act will result in a violation of the Anti-Deficiency Act, 31 U.S.C. § 665 (1970), and may occasion the following music to your ears: "It is my duty to advise you under Article 31, U.C.M.J., that you are suspected of a violation of the Anti-Deficiency Act . . . ." A knowing or willful violation may subject responsible personnel to removal from office, a \$5,000 fine, or two years imprisonment.

## JAGC Personnel Section

### PP&TO, OTJAG

#### 1. Assignments.

MAJOR			
NAME	FROM	TO	APPROX DATE
MAGERS, Malcolm S.	2d Inf Div, APO 96224	Eighth US Army, APO 96301	Mar 78
CAPTAINS			
COOCH, Francis	7th Inf Div, Ft Ord, CA	27th Adv Crs, TJAGSA	Jul 78
DICHARRY, Michael J. (Diverted)	USAREUR	Logistics Mgt Ctr, Ft. Lee, VA	Apr 78
GOUDEAUX, Nolan	USASTC, Ft McClellan, AL	USACC Taiwan	Apr 78
HALL, Warren D.	USAREUR	USA Armament Materiel Readiness CMD, Rock Island, IL	Apr 78
HAGGARD, ALBERT	Health Svcs Cmd, Ft Sam Houston, TX	27th Adv Crs, TJAGSA	Aug 78
JEFFRESS, Walton, M., Jr.	OTJAG	USALSA	Nov 77
MAC INTYRE, Karen	3d Inf Div, APO 09036	USALSA	Mar 78

#### 2. AUS Promotions.

MAJOR			
Baker, James R.	8 Jan 78	Gillett, Michael E.	5 Jan 78
Chwalibog, Andrew J.	5 Jan 78	Kirby, Robert B.	8 Jan 78
Feighny, Michael L.	13 Jan 78	Kittell, Robert N.	8 Jan 78
Gibb, Steven P.	10 Jan 78	Lancaster, Steven F.	8 Jan 78
		Leonardi, Kenneth J.	3 Jan 78

Mackey, Richard J.	5 Jan 78
Rice, Frances P.	11 Jan 78
Seibold, Paul M.	6 Jan 78
Yeksavich, Michael	14 Jan 78

CW 3

Hall, Jackie E.	4 Jan 78
Hertli, Peter	9 Jan 78

### 3. Legal Clerk Promotions. Congratulations

to the following legal clerks who have been selected for promotion to MSG (E-8):

SFC Charles Boatwright  
SFC James R. Burton  
SFC Clair Hinkle  
SFC Ulysies Johnson  
SFC Eribert Labrillazo  
SFC Vera Jean Miller  
SFC George Thorne

## Current Materials of Interest

### Articles

CPT Joel Miller, *Procedure in the Appellate Courts*, THE ADVOCATE, Vol. 9 No. 5, Sept.-Oct. 1977, at 1.

CPT Gregory B. English, *Opportunities for Advocacy During the Presentencing Phase of Courts-Martial*, THE ADVOCATE, Vol. 9, No. 5, Sept.-Oct. 1977, at 5.

Mark Nagle, *Pretrial Confinement*, THE ADVOCATE, Vol 9, No. 5, Sept.-Oct. 1977, at 12.

Harold L. Hitchens, *Factors Involved in a Review of the Code of Conduct for the Armed Forces*, NAVAL WAR C. REV., Winter 1978, at 47.

Note, *Who Polices Child Abuse and Neglect on Military Enclaves Over Which the Federal Government Exercises Exclusive Jurisdiction?* 8 N.C. CENT. L.J. 261 (1977).

Law and Medicine Section, *Evidentiary Aspects of Manufacturer Recommendations in Establishing Physician's Standard of Care*, 31 ARK. L. REV. 477 (1977).

Law and Medicine Section, *Consent to Surgical Procedures*, 31 ARK. L. REV. 493 (1977).

Law and Medicine Section, *The Medical-Ethical Responsibilities and Legal Duties of the Consulting Physician*, 31 ARK. L. REV. 504 (1977).

John A. Knebel, President of the Federal Bar Association, *Federal Bar on Former Government Attorneys in Private Practice*, DIS-

TRICT LAWYER, VOL. 2 No. 3, Feb. 1978, at 12.

John A. Knebel, *FBA Position on D.C. Bar Legal Ethics Committee's Proposed Amendments to Canon 9*, 25 FED. B. NEWS 37 (1978).

Hunt, *The Number You Want May Not be in a Directory*, DISTRICT LAWYER, Vol. 2 No. 3, Feb. 1978, at 30.

Sippel, *7th Exemption of the Privacy Act—A Catch 22 Denial of Due Process*, DISTRICT LAWYER, Vol. 2 No. 3, Feb. 1978, at 34.

LTC John T. Sherwood, Jr., *An Examination of the Legal Justifications Presented by Japan Before the League of Nations in Defense of Her Actions Concerning the Mukden Incident, the Occupation of Manchuria and the Creation of Manchukuo*, REVUE DE DROIT PENAL MILITAIRE ET DE DROIT DE LA GUERRE, Vol. XVI-2-3, Dec. 1977.

CPT Steven E. Napper, *Equal Protection and Drug Cases*, THE ADVOCATE, Vol. 9 No. 6, Nov.-Dec. 1977, at 3.

CPT Malcolm H. Squires, *In the Wake of Alef: A Return to McCarthyism*, THE ADVOCATE, Vol. 9 No. 6, Nov.-Dec. 1977, at 10.

CPT William L. Finch, *Actions Which Deny an Accused's Right to Counsel*, THE ADVOCATE, Vol. 9 No. 6, Nov.-Dec. 1977, at 19.

CPT Glenn L. Madere, *Clemency, Parole, and Restoration to Duty for the Military Prisoner*, THE ADVOCATE, Vol. 9 No. 6, Nov.-Dec. 1977, at 29.

*Trial and Appellate Statistics*, THE ADVOCATE

CATE, Vol. 9 No. 6, Nov.-Dec. 1977, at 41.

**Case Note**

Case Note, *Division of Military Retirement Pay Upon Dissolution of Marriage*, 31 ARK. L. REV. 522 (1977).

**AR**

AR 1-32, 28 November 1977, effective 1 January 1978, extends the applicability of authority to exercise disciplinary control over all Active Army personnel. AR 1-32 is titled Administration: Disciplinary Control of US Army Personnel.

**FLITE**

**Chief**

Lieutenant Colonel Michael E. Murphy

**Address**

FLITE (HQ USAF/JAESL)  
Denver, Colorado 80279

**Telephone Numbers**

Commercial	(303) 320-7531
AUTOVON	926-7531
FTS	326-7531

**Current Military Justice Library**

- 4 M.J. No. 6
- 4 M.J. No. 7
- 1 M.J. [Bound Volume]
- 2 M.J. [Bound Volume]
- 3 M.J. [Bound Volume]

By Order of the Secretary of the Army:

Official:

J. C. PENNINGTON  
*Brigadier General, United States Army*  
*The Adjutant General*

BERNARD W. ROGERS  
*General, United States Army*  
*Chief of Staff*